

TRADE UNION AND LABOUR RELATIONS ((CONSOLIDATION)(ACT 2020

INFORMATION FACT SHEET

In an effort to strengthen the rights and obligations of employers and employees in Bermuda, the 2020 Trade Union and Labour Relations (Consolidation) Bill seeks to modernize and clarify the existing legislation to ensure it is in line with international best practices.

Considering the present state of the job market in Bermuda and the need to get Bermudians reemployed, the amendments addressed problems within the legislation concerning ambiguity and areas that were considered archaic and outdated for the 21st century, particularly when compared to examples of more modern legislation in other jurisdictions and the standard set for best practices by the International Labour Organization.

The Trade Union and Labour Relations (Consolidation) Act 2020 will come into operation on 1 June 2021 to allow employees, employers and their respective representatives to familiarize themselves with its provisions and make the necessary changes to their current contracts of employment and/or handbooks, to ensure compliance.

The details of the **Labour Legislative Amendments** and how they impact employers and employees is provided here for your convenience.

1. TRIBUNALS AND BOARDS OF INQUIRIES

| CURRENT LEGISLATION | PROPOSED CHANGE | RATIONALE |
|---|--|--|
| Currently there are 10 different tribunals that handle various employment complaints and labour related disputes. | Instead of multiple tribunals, the Employment and Labour Relations Tribunal will be created. | There will now be one Tribunal, the Employment and Labour Relations Tribunal, to handle all employment complaints and labour related disputes. |

2. MEDIATION

| CURRENT LEGISLATION | PROPOSED CHANGE | RATIONALE |
|---|---|--|
| Under the Labour Relations Act, the Minister has the option to refer a dispute to a Mediator. | Referral to mediation by the Minister has been removed. | Mediation is voluntary and already conducted by the Labour Relations section. Furthermore, mediation outside of the Labour Relations Section is not necessary as it prolongs resolution process and most parties opt out. If a resolution is not reached via mediation through the Labour Relations Section, the matter would then be referred to a Tribunal panel. |



3. CIVIL PENALTIES

| CURRENT LEGISLATION | PROPOSED CHANGE | RATIONALE |
|---|---|--|
| Under the Labour Acts, persons who commit offences are liable on summary conviction to a fine or imprisonment | The establishment of civil penalties up to \$5000 to replace most offences requiring court appearances. | A civil penalty regime entails a faster less laborious process with both the Labour Relations Manager and the Employment and Labour Relations Tribunal able to impose a penalty. |

4. DEFINITIONS – A number of definitions that either do not exist or are out of step with best practices have been more clearly defined or created.

| DEFINITIONS | NEW DEFINITIONS | RATIONALE/EFFECT |
|-------------------------------|--|---|
| Employer | A person in Bermuda who employs workers. | |
| Lockout | The closing of a place of employment, a suspension of work by an employer or a refusal by an employer to continue to employ a number of their employees, done to compel employees to agree to terms or conditions of employment. | This definition is simplified and modelled after the Canada Labour Act and the Grenada Act. |
| Employers Organization | Any organization established by employers to represent and promote employers interests and the regulation of relations between employers and employees. | |
| Management Person | A person who in the course of his employment in an undertaking, has authority in the interest of the employer: <ul style="list-style-type: none"> to employ, transfer, lay-off, recall, promote or dismiss other workers; or in relation to the direction and management of the undertaking. | Policy aim is to narrow who constitutes a “management person” and as a result, widen who constitutes a “non-management person” and is able to be a member of a bargaining unit. |
| Civil penalty | A civil penalty imposed in respect of a contravention either by the Labour Relations Manager or the Employment and Labour Relations Tribunal. | Defines the new civil penalty regime. |



5. CERTIFICATION/DECERTIFICATION

| CURRENT LEGISLATION | PROPOSED CHANGE | RATIONALE |
|---|--|---|
| The current practice has been to conduct a ballot where there is agreement for certification by the employer and for that ballot to result in more than 50% to be successful. | Where there is agreement by the employer for certification and the union can show support of 60% of the workers a ballot is waived. An increase in the support of workers from more than 50% to 60% must occur for automatic certification, failing which a ballot will ensue. | This proposal will save time and effort. |
| A copy of the Certification Application is sent to the employer, which may include disclosure of Union Membership Forms. | Provision for confidentiality and protection of workers during application for union certification. | Protects the anonymity of the workers. |
| Current response by employers to an Application for Certification is 14 days. | Reduction in response time from 14 to 10 days. | Reduces the potential for interference by management. |
| The current practice has been to conduct a ballot where there is agreement for cancellation of certification and for that ballot to result in more than 50% to be successful. | Provision for the Manager to cancel the certification of a union without a ballot if he is satisfied that more than 60% of the workers do not or no longer wish to have the union as their exclusive bargaining agent. | This change will save time and effort. |

6. AGENCY SHOP

| CURRENT LEGISLATION | PROPOSED CHANGE | RATIONALE |
|---|--|--|
| Once certified as the exclusive bargaining agent, the successful union must negotiate and agree an agency shop agreement to be voted on by the bargaining unit. | Union certification would automatically prompt an agency shop agreement, making the ballot unnecessary. | All employees benefit from a Collective Agreement not just unionized persons and the proposed amendment reflects the efforts of the union. |
| Agency shop contributions are: 100% to union; or 100% to charity | Agency Shop contributions will now be: 100% to union; or 50% partial contribution to charity and 50% to union. | |



7. TRANSFER OF UNDERTAKING

| CURRENT LEGISLATION | PROPOSED CHANGE | RATIONALE |
|---|---|--|
| An employer can discontinue his undertaking and must provide to the Manager the time-frame, the reasons why and the number of employees affected. | <ul style="list-style-type: none"> An employer who decides to discontinue, sell, or otherwise transfer his undertaking must provide to the Manager and to the union at least 2 weeks notice, the reason(s), and the number of workers affected. A union shall continue to represent a bargaining unit despite a sale, transfer or merger of a business. | If a unionized bargaining unit is sold, transferred or merged, it is fair practice to allow the union to continue representing said bargaining unit. |

8. ESSENTIAL SERVICES

| CURRENT LEGISLATION | PROPOSED CHANGE | RATIONALE |
|---|---|---|
| Prison Officers are currently exempt from the application of the Trade Union Act, the Labour Relations Act and The Labour Disputes Act. | Prison Officers will no longer be exempt from the consolidated Act. | To be in line with international best practice taking into consideration work conditions, environmental circumstances, the protection of human life and public safety. |
| Prison Officers are not an essential service. | Prison Officers will become an essential service. | |
| No provision | Internet services will become an essential service. | Access to internet service is required to conduct all facets of life. This technology enables work, health services, shopping, entertainment, communication and the ability to access services. |

This task and the process to get to tabling of this Bill was a collaborative effort by the Ministry of Labour and the members of the Labour Advisory Council (LAC). The LAC's ability to work together in the interest of their members and the labour force of Bermuda is highly commended and greatly appreciated.

