

# EMPLOYMENT AMENDMENT ACT 2006

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**BERMUDA**

**2006 : 12**

## EMPLOYMENT AMENDMENT ACT 2006

Date of Assent: 8 June 2006

Operative Date: 8 June 2006

### ARRANGEMENT OF SECTIONS

1	Short title	5	Amendment of section 18
2	Amendment of section 3	6	Amendment of section 23
3	Amendment of section 4	7	Amendment of section 30
4	Amendment of section 13	8	Amendment of section 33

WHEREAS it is expedient to amend the Employment Act 2000:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

#### **Short title**

1 This Act, which amends the Employment Act 2000 (the "principal Act"), may be cited as the Employment Amendment Act 2006.

#### **Amendment of section 3**

2 Section 3 of the principal Act is amended by deleting the definition of "employer" and substituting the following —

"'employer" means a person in Bermuda who employs employees;"

#### **Amendment of section 4**

3 Section 4 of the principal Act is amended —

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- (a) in subsection (1) —
  - (i) in paragraph (a), by inserting next after the word "employed", the words, "wholly or mainly in Bermuda"; and
  - (ii) in paragraph (b), by inserting next after the word "services", the words, "wholly or mainly in Bermuda"; and
- (b) in subsection (4), by deleting the word "affirmative" and substituting the word "negative".

### **Amendment of section 13**

4 Section 13(4) of the principal Act is amended by deleting the word "An" and substituting the words "Subject to section 46 of the Defence Act 1965, an".

### **Amendment of section 18**

5 Section 18 of the principal Act is amended —

- (a) by repealing subsection (1) and substituting the following subsections —

"(1) An employee's contract of employment shall not be terminated by an employer unless there is a valid reason for termination connected with —

- (a) the ability, performance or conduct of the employee; or
- (b) the operational requirements of the employer's business.

(1A) An employee's contract of employment shall not be terminated by an employer under subsection (1), unless the notice requirements under section 20 and the provisions under section 26 or 27 have been complied with."

- (b) by inserting the following subsection next after subsection (3) —

"(4) Notwithstanding subsections (1) and (1A), an employee's contract of employment may be terminated by the employer without notice, for serious misconduct, under section 25."

### **Amendment of section 23**

6 Section 23 of the principal Act is amended —

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- (a) in subsection (1), by deleting the word "On" and substituting the words "Subject to subsection (7), on"; and
- (b) by inserting the following subsection next after subsection (6) —

"(7) The Minister, after consultation with the Labour Advisory Council, by regulations subject to the affirmative resolution procedure, may exempt specified types of employment from the payment of severance allowance where the Minister is satisfied on the application of an industry that there are exceptional circumstances to justify an exemption."

### **Amendment of section 30**

7 Section 30 of the principal Act is amended in subsection (1) by deleting the word "who" and substituting the words "whose position".

### **Amendment of section 33**

8 Section 33 of the principal Act is amended by repealing subsection (3) and substituting the following subsections —

"(3) Subject to the retention of such sums as may be necessary to satisfy the costs, charges and expenses of the winding up of the employer's business, but notwithstanding the priority conferred on certain debts by section 236 of the Companies Act 1981 or any other enactment, on the winding up of an employer's business or the appointment of a receiver, the claims of an employee to the —

- (a) payment for vacation accrued but not taken;
- (b) payment for wages earned but not paid; and
- (c) severance allowance as calculated in accordance with section 23(2) up to a maximum of twenty-six weeks' wages,

shall have priority over all other claims including claims of the Crown.

(4) The debts mentioned in subsection (3)(a), (b) and (c) shall rank equally among themselves and be paid in full, unless the assets of the employer's business available for payment of general creditors are insufficient to meet them, in which case they shall abate in equal proportions."