

Article

Impact of COVID-19: Bermuda Employment Considerations

[Updated 15 May 2020]

Authors: Christian Luthi, Director | Craig W. MacIntyre, Director | Stephanie C. Bernard, Counsel | Sarah Blair, Associate

Conyers has been advising on employment issues arising out of the disruption caused by the coronavirus (COVID-19). In this article, we share some employment considerations for Bermuda businesses and organisations responding to the impact of COVID-19.

The disruption caused by the COVID-19 pandemic has obviously been impacting businesses in many sectors, from travel and tourism, restaurants and events, to professional services. Across the island, companies and organisations are considering how to implement procedures to best protect the safety of staff and customers, but also to ensure the continuity of business and services both during the period of “lockdown” and when the economy starts to reopen. There are certain legal considerations to be taken into account, as outlined below.

Sick leave

Under Bermuda employment law, employers must provide employees who have worked at least one year of continuous employment with eight days of paid sick leave per year. This will be subject to the terms of an employee’s contract of employment, which may provide for earlier entitlement (i.e. before the completion of one year’s employment) and/or a greater number of days of paid sick leave (it may not provide for less). If the employee is sick for two or more consecutive days, the employer is entitled to request a certificate from a registered medical practitioner certifying that the employee is unable to work. Once the paid sick leave is exhausted, further leave will be unpaid.

Where an employee is ill, the above procedure is straightforward to apply. If you have employees who are refusing to come into work for fear of contracting COVID-19, and such employees are unable to work from home, it is more difficult. Any company policy on vacation or unpaid leave should be taken into account. Generally, though, it is important to note that fear of contracting COVID-19 is not a reason for not working. Sick leave can only be used if the employee is genuinely sick, it cannot be used to avoid becoming sick. Other issues are engaged; see below.

Quarantine/ isolation/ shelter in place

While recommendations and requirements are being regularly updated, at the time of writing the Government of Bermuda requires that all individuals must shelter in place and that in certain circumstances individuals must go into quarantine or self-isolation at a designated facility. Where arrangements cannot be accommodated to allow the individual to work from home, you may want to consider providing the employee an election to use paid vacation days or unpaid leave for this period.

Layoffs/ salary cuts/ hour reductions

You may consider that a reduction in your workforce is necessary. If so, the questions will be whether this can be achieved by contractual agreement or the temporary layoff of staff.

Bermuda employment law allows for the temporary layoff of an employee where conditions of redundancy exist. If such conditions exist, an employer may lay off an employee for a continuous period not exceeding four months. Where a layoff continues for a period which exceeds four months, it shall be deemed to be termination for redundancy.

An alternative would be to seek the employee’s agreement to reducing their hours, salary and/or bonus.

If you are considering reducing your workforce, legal advice should be obtained to inform you of the options available.

Unemployment benefit

The Bermuda Government has put in place an Unemployment Benefit programme to assist employees whose employment has been affected as a direct result of COVID-19, for example by reason of layoff, termination, or a substantial reduction in their hours (being 50% or less than their normal hours) or due to mandatory quarantine or isolation without compensation. Other conditions also apply.

Employees who meet the criteria for the benefit must complete an online application. If approved, the benefit will provide to the employee 60% of the individual's remuneration (not exceeding \$500 per week) up to a maximum of 12 weeks. Any compensation received from the employer during that time will be taken into account when determining the benefit amount (e.g. the Government will "top up" the difference between that compensation and 60% (or the \$500 cap per week) of the individual's remuneration).

If you are considering reducing your workforce, you may want to consider whether your employees qualify for the Unemployment Benefit. You will need to provide applicants with a letter confirming the individual's employment status and most recent remuneration. If all of your employees are entitled to the Unemployment Benefit, it is now possible to apply on behalf of your employees and to manage the benefit payments on their behalf (subject to various record-keeping and other obligations).

Contracts / collective bargaining agreements

As in all matters concerning an employee's employment, the terms of i) their contract of employment, ii) any applicable collective bargaining agreements, and iii) any applicable company policies should be consulted. Provided that statutory requirements are always met, such terms may provide for additional obligations in respect of, for example, pay or benefits due during any layoff period.

Negligence – managing COVID-19 at the workplace

The issues around what employers should be doing to protect their employees – while they are continuing to work in essential or permitted services or when they resume working in the office – are not without their complexity. Employers owe a duty of care to their employees to take reasonable steps to provide them with a safe place of work. While the scope and extent of this duty is not clear cut, in this context we expect that it will include taking appropriate and reasonable measures to protect staff and customers from COVID-19, such as social distancing and sanitisation. What constitutes reasonable measures will likely be impacted by the nature of the work being undertaken. Such measures should take into account public health guidance and current conditions here and elsewhere. It will be important for employers to adapt to new information as it becomes available.

This is not only to protect the safety of your staff and customers, but also to avoid any claim in negligence from any affected employee for their employer having failed to take appropriate safety measures. It therefore may require the more flexible implementation of policies – or the development of new, COVID-19 specific policies – to ensure consistent responses.

Registered pension plans

Amendments were passed in Bermuda's House of Assembly on Friday 8 May 2020, to section 24 of the National Pension Scheme (Occupational Pensions) Act 1998 ("the NPS Act") which expands the ability of members and former members of defined contribution pension plans and local retirement products to obtain limited refunds from their pension balances. For full details please see our [Alert](#).

Of note, in respect of the National Pension Scheme (Occupational Pensions) Amendment Act 2019, the amendment which would otherwise require non-Bermudian employees (unless exempted) to be enrolled in a registered plan has been delayed and has not, as of the date of writing, been brought into effect.

In respect of the National Pension Scheme (Occupational Pensions) Temporary Amendment Act 2019¹, employers and employees, each with the agreement of the other, may suspend contributions to their registered pension schemes through 31 December 2021.

If you have made changes to an employee's terms of employment, such as reduced hours or layoffs, resulting in a reduction of the employee's "pensionable earnings" you should seek advice as to how that may impact your contribution levels.

We would also remind you that pursuant to the financial hardship regulations made under the Act, employees may apply for hardship withdrawals in various enumerated circumstances of financial hardship.

Discrimination

¹ Please refer to our Alerts of [December 2019](#), [January 2020](#) and [March 2020](#) for information about these amendments.

To avoid claims of discrimination, policies should be applied equally to employees. To assist with this, it may be advisable to develop a COVID-19 specific policy to deal with the unique circumstances that are arising.

If you have any questions on how COVID-19 may affect your business, please reach out to one of those listed below.

Conyers remains focused on delivering high quality advice and service to clients and will continue to do so during these difficult times. We have activated our business continuity planning strategies and all of our professionals are available and able to meet our clients' needs.

Authors:

Christian R. Luthi
Director
christian.luthi@conyers.com
+1 441 298 7814

Craig W. MacIntyre
Director
craig.macintyre@conyers.com
+1 441 299 4907

Stephanie C. Bernard
Counsel
stephanie.bernard@conyers.com
+1 441 298 7875

Sarah Blair
Associate
sarah.blair@conyers.com
+1 441 279 5335

Other Contacts:

Ben Adamson
Director
ben.adamson@conyers.com
+1 441 298 7824

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

For further information please contact: media@conyers.com