

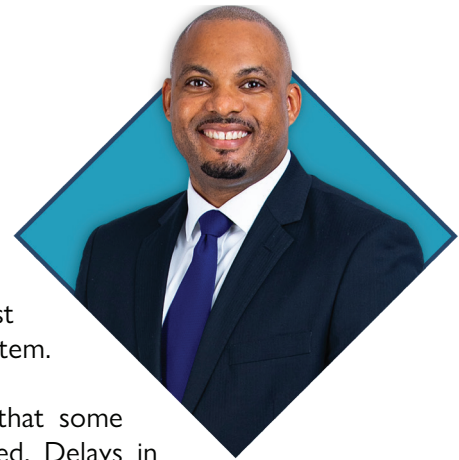


GOVERNMENT OF BERMUDA  
Ministry of Economy and Labour

# STRENGTHENING THE ENFORCEMENT POWERS OF BERMUDA'S EMPLOYMENT TRIBUNAL

# MINISTERIAL FOREWORD

The Employment and Labour Relations Tribunal plays a crucial role in ensuring that workplace disputes in Bermuda are resolved fairly, efficiently, and with respect for the law. For many employees and employers, it is the first and most important point of access to justice in our labour relations system.



While the Tribunal has served Bermuda well, it is clear that some aspects of the current framework need to be strengthened. Delays in proceedings, gaps in procedural protections, and, most concerning, instances where Tribunal orders are not complied with, risk undermining confidence in the system and placing unnecessary strain on workers who are simply seeking the remedies they have been awarded.

This document sets out the Government's proposals to address these challenges. The measures outlined are practical, proportionate, and informed by the Tribunal's own experience, stakeholder engagement, and international best practice. They are designed to support better case management, protect employees from avoidable procedural pressure, and ensure that Tribunal decisions are meaningful and enforceable in practice.

These proposals are not about creating unnecessary burdens for responsible employers. Rather, they aim to provide greater clarity, consistency, and accountability for everyone involved, while reinforcing respect for the Tribunal and the rule of law.

By strengthening enforcement and modernising key processes, we can help ensure that Bermuda's employment justice system remains fair, effective, and worthy of public trust. I encourage all stakeholders to engage constructively with the proposals contained in this document.

**Minister of Economy and Labour, Jason Hayward, JP, MP.**

# INTRODUCTION

The Employment and Labour Relations Tribunal plays a vital role in protecting workers' rights and resolving workplace disputes in Bermuda. It provides an accessible and specialist forum where employees and employers can have disagreements heard and decided fairly, without the cost and complexity of going directly to the courts. Over time, the Tribunal has contributed significantly to improving access to justice and strengthening confidence in Bermuda's labour relations system.

Despite this important role, a number of ongoing challenges have begun to undermine the effectiveness of the current legal framework. These challenges include delays caused by scheduling disputes, gaps in procedural protections for employees, difficulties meeting statutory decision making timelines, and, most critically, the failure of some employers to comply with Tribunal orders. Together, these issues weaken trust in the system and place unnecessary strain on workers who have already been found to be owed remedies.

These concerns were formally identified in the Tribunal's 2023–2024 Annual Report, which highlighted the need for stronger enforcement powers, improved case management, clearer procedural protections, and a more effective compliance regime. This policy proposal responds directly to those concerns and sets out measures designed to ensure that Tribunal decisions are not only fair and timely but also respected and enforced in practice.

## THE PROBLEMS TO BE ADDRESSED

Bermuda's Employment Act 2000 significantly strengthened worker protections and dispute resolution when it was enacted. However, experience over more than two decades has revealed a number of legislative and operational gaps that now require attention. These gaps create uncertainty for both employees and employers, allow avoidable disputes to escalate, and, in some cases, prevent workers from receiving remedies awarded to them by the Tribunal.

One key issue concerns disciplinary action during rest periods and leave. While the law prohibits an employer from giving notice of termination during certain periods of leave, it does not clearly prevent employers from issuing disciplinary warnings during weekends, rest days, after working hours, or while an employee is on vacation or other forms of leave. This omission has allowed disciplinary measures to be delivered in ways that place undue pressure on employees and intensify workplace conflict.

Another challenge relates to Tribunal scheduling. Although the Tribunal has the legal authority to proceed with hearings when parties fail to attend after proper notice, the process has been repeatedly disrupted by tactical scheduling disputes. Requests to change hearing dates, late raised conflicts by legal counsel, and threats of judicial review have resulted in prolonged adjournments, sometimes delaying cases for months, and in rare cases for over a year. The lack of clear, enforceable rules around how and when scheduling changes can be requested has limited the Tribunal's ability to manage cases efficiently.

Decision making timelines have also proven problematic. The law currently requires the Tribunal to issue and publish decisions within 30 calendar days. While intended to promote speed, this requirement has placed pressure on Tribunal members and, in practice, has proven more demanding than comparable standards applied in the Supreme Court. Tribunal members have indicated that aligning decision timelines with business days would better support accuracy and quality without encouraging delay.

Most significantly, non compliance with Tribunal decisions remains a persistent and serious concern. Some employers have failed to pay awards, questioned whether Tribunal decisions are truly binding, or attempted to reduce amounts owed without authorisation. Although Tribunal decisions carry legal force, employees are often forced to pursue further action in the Supreme Court to enforce them, an expensive and burdensome step that undermines access to justice. Existing civil penalties have not been sufficient to deter repeat non compliance.

International experience supports the need for stronger enforcement tools. In jurisdictions such as Canada and the United Kingdom, graduated penalties, public naming of non compliant employers, and work permit restrictions have proven effective in improving compliance and accountability. These examples demonstrate that clear consequences, applied proportionately and transparently, encourage respect for tribunal decisions.

## **THE PROPOSED POLICY RESPONSE**

To address these challenges, the Government proposes a package of legislative and operational reforms aimed at strengthening procedural fairness, improving Tribunal efficiency, and ensuring meaningful enforcement of Tribunal orders.

## **PROTECTING EMPLOYEES DURING REST PERIODS AND LEAVE**

The first proposal focuses on closing the gap that allows disciplinary action to be delivered during rest days, weekends, after hours, or while an employee is on leave. The intention is not to prevent employers from managing misconduct, but to prevent disciplinary measures from being used in a way that causes unnecessary stress or circumvents due process.

Under the proposal, it would generally be unlawful for employers to issue disciplinary warnings during these periods. Limited exceptions would apply only where there is a documented, time sensitive risk, for example, serious integrity concerns such as theft or malicious conduct, or where sick leave exceeds six weeks. In such cases, employers would be required to record their reasons in writing and notify the Department of Labour. Wherever possible, disciplinary matters should instead be addressed during scheduled, on duty meetings.

Ministerial guidelines would clarify what qualifies as “time sensitive” and set clear standards for documentation, ensuring consistency and fairness.

# STRENGTHENING TRIBUNAL SCHEDULING AUTHORITY

The second proposal addresses delays caused by tactical scheduling disputes. While parties must have a fair opportunity to be heard, the system must also prevent misuse of scheduling requests to delay proceedings.

To achieve this, Tribunal directions would be strengthened to clearly explain how hearing dates can be varied, establish firm deadlines for proposing alternative dates, and warn parties that unreasonable refusals may result in costs or civil penalties. A statutory presumption would allow hearings to proceed where two or more reasonable dates are refused without valid cause.

These measures are intended to reinforce the Tribunal's authority, promote efficient case management, and reduce prolonged delays that frustrate both parties.

# ALIGNING DECISION MAKING TIMELINES WITH BUSINESS DAYS

The policy also proposes adjusting the timeline for issuing Tribunal decisions. Replacing the current requirement of 30 calendar days with 30 business days would bring the Tribunal more in line with other courts and tribunals, allowing sufficient time for careful consideration and written reasons.

To maintain momentum, this change would be supported by internal performance targets, such as issuing the majority of decisions within shorter timeframes, monitored through performance dashboards. The aim is to preserve both speed and quality, rather than sacrificing one for the other.

# CREATING A CLEAR AND GRADUATED ENFORCEMENT FRAMEWORK

The most significant reform relates to enforcement. The proposal introduces a clear, step by step framework that ensures employers face predictable and escalating consequences if they fail to comply with Tribunal orders.

## **Under the proposed system:**

- A first instance of non compliance would result in a formal notice from the Department of Labour, giving the employer 30 days to comply.
- A second instance would involve referral back to the Tribunal, which would impose a civil penalty of \$15,000 per affected employee, in addition to requiring full payment of the original award, with a further 30 day deadline.

- A third instance would place the employer on a publicly available Compliance Watch List, updated monthly.
- Continued non compliance beyond this stage could trigger broader public notices, such as media releases or postings on official Government platforms.

This approach is designed to balance fairness and deterrence. Employers are given clear opportunities to comply, but persistent disregard for Tribunal decisions carries reputational and financial consequences. The framework aligns with recommendations agreed through the Labour Advisory Council and draws on proven international models adapted to Bermuda's context.

## **OVERALL IMPACT AND CONCLUSION**

Together, these measures represent a targeted but comprehensive strengthening of Bermuda's employment justice system. They close loopholes that allow disciplinary action during rest or leave periods, clarify the Tribunal's authority to manage cases effectively, align decision timelines with practical realities, and, most importantly, ensure that Tribunal decisions are enforceable in practice.

By introducing clear rules, proportionate penalties, and transparent enforcement steps, the policy aims to restore confidence in the Tribunal process for both workers and employers. Tribunal decisions must not only exist on paper; they must lead to real outcomes.

These reforms strike a balanced approach, protecting workers, supporting responsible employers, and reinforcing respect for the rule of law. At the same time, they ensure that access to justice in Bermuda's labour relations system remains fair, effective, and meaningful.



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