

Cayman Islands Employment Update

28 April 2020

The first ever electronic meeting of the Cayman Islands Legislative Assembly on 23 April 2020 considered a number of pieces of legislation, largely in response to the COVID-19 emergency, that are likely to be of interest to local employers and employees.

This note is intended to provide a brief overview of the key changes: some of these are technical in nature and this note should not be regarded as a substitute for specific advice.

Immigration (Transition) (Amendment) Law

Some important amendments to the work permit regime are introduced by this Law, first and foremost the replacement of the previous vacancies in the press with an obligation to place them on an electronic portal provided by WORC. Once that portal is in operation, press advertisement is stated to be voluntary only.

There are detailed transitional provisions in respect of pre-existing applications, and also to deal with the position of employees whose permits expired during the period of WORC's shutdown: in effect, there is a grace period extending for 30 days after the commencement date of the new provisions within which an application must be made, allowing the employee to continue work pending determination. However, if an application is not submitted within the grace period then the permit will expire and the employee must cease working.

Where a permit holder's term limit expires, they are permitted to continue to work notwithstanding that expiry for 90 days after the commencement of the Law. However, there are express provisions for that period to be extended by Cabinet if necessary: it seems reasonable to assume that the withdrawal of permission to work will be directly linked to the restoration of normal travel links outside of the Cayman Islands permitting the employee to return to their home jurisdiction.



Immigration (Transition) (Work Permit Exemption) Regulations 2020

This legislation is limited in its application to designated health care facilities and the Health Services Authority, and is intended to facilitate short term recruitment of staff by waiving the requirement to obtain a work permit for medical personnel from overseas for so long as the Regulations remain in force, although a copy of the contract must still be submitted to WORC for record keeping purposes.

It also provides for short-term secondments of medical staff, as it allows for both an existing work permit holder to be employed on a short-term contract without the need to terminate their work permit, and also for permanent residents to be legally employed irrespective of the terms of their Residency and Employment Rights Certificate.

National Pensions (Amendment) Law 2020

In response to the current economic conditions, a number of amendments have been made to the pensions regime in order to provide access to resources for employees who may be undergoing financial hardship. These are temporary in nature, and are currently scheduled to cease on 31 October 2020.

First, a “pension holiday” has been introduced as of 1 April 2020 whereby the requirement for both employees and employers to contribute to a statutory pension plan is suspended until 30 September 2020. The wording does not rely on consent, and therefore it appears that it may be possible for an employer to unilaterally cease its contribution, notwithstanding that the employee may wish to continue paying in.

Second, a right of immediate access to a portion of accrued pension funds has been introduced as of 1 May 2020. Any person currently in the Islands, or who leaves between 1 February 2020 and the expiry of the Law, is entitled (subject to the availability of funds) to withdraw a single lump sum of up to CI\$10,000 from their pension plus 25% of the remaining balance.

This provision does not apply to either public servants or current pension recipients.

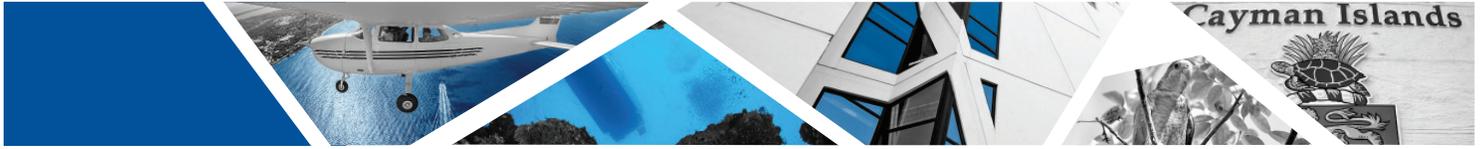
Labour (Amendment) Law 2020

The principal substantive amendment to the Labour Law is a formal provision permitting any document that is required to be “served, sent, delivered or submitted” under the Law to be sent by electronic means to an email address provided by the recipient. Although passed in response to the pandemic and the attendant difficulties with personal service, there is nothing in the drafting or explanatory notes to suggest that this provision is intended to be temporary.

The Law also now affords a general power to Cabinet in certain emergencies to waive, or extend the period for compliance with, any obligation under the Law. That suggests that there may be further changes to the regime in the offing as the pandemic develops, but no further details are currently available.

Labour (Extension of Severance Pay Period) Law 2020

This law applies to temporary lay-offs of employees pursuant to section 42(2) and 42(3) of the Labour Law.



Previously, such a lay-off could only be for a maximum duration of 30 days (or 6 months in the construction or agriculture sectors) before the obligation to pay severance pay crystallised and the lay-off became a full termination. Those periods have now been extended by a further period of 30 days and are therefore 60 days and 7 months respectively.

The obligation to pay interest on severance pay at 10% per annum in the event that the employee is not re-employed at the conclusion of the period of layoff remains unchanged.

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