



POLICY PROPOSAL TO INTRODUCE PAY TRANSPARENCY LEGISLATION



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INTRODUCTION

This proposal aims to ensure that everyone in Bermuda is paid fairly for the work they do, regardless of their gender, race, or ethnicity, by increasing openness around how pay is set. It introduces practical steps to support fairness in the workplace, including clear rules about when pay differences are acceptable, requirements for employers to keep proper pay records, and a system to make sure these rules are followed. It also provides strong protections so employees cannot be punished for raising concerns about unfair pay. Finally, the proposal highlights the importance of educating both workers and employers about their rights and responsibilities, helping to build a more transparent, informed, and equitable work environment across Bermuda.

BACKGROUND

Within the *Consultation on Retaining the Local Workforce Position Paper 2024*, the Ministry of Economy and Labour identified the need to improve labour protections for Bermudian workers. As part of this effort, the Government recognised the importance of adding “equal pay for equal work” rules to the labour code and strengthening pay transparency.

Ensuring that people are paid fairly for doing the same work is a key step toward reducing long standing wage gaps linked to gender, race, and ethnicity. These wage gaps not only create economic inequality but also undermine fairness in the workplace.

In Bermuda, income and employment differences can be seen across immigration status groups and between racial groups. Data from the *Bermuda Job Market Employment Briefs 2023*, published by the Department of Statistics, shows clear patterns.

In 2022, Bermudians had the lowest median gross annual income of all immigration groups at \$65,302. This rose slightly to \$67,187 in 2023. In contrast, non Bermudians earned a median income of \$82,563 in 2023. Other groups, such as spouses of Bermudians and permanent resident certificate (PRC) holders, also earned more, on average, than Bermudians.

Income differences also appear along racial lines. In 2023, the median gross annual income for white workers was about 50% higher than that of Black workers. This shows that income gaps continue to exist and often overlap with both race and immigration status.

These inequalities are also reflected in the kinds of jobs people hold. In high paying industries like financial services, where jobs include actuaries, investment managers, and compliance officers, non Bermudians are more often found in the senior or specialised roles. These positions often require international credentials or experience that may be less common among the local workforce.

Many Bermudians, especially Black Bermudians, are more likely to be employed in administrative or support roles. These jobs generally pay less and offer fewer opportunities for career advancement. This pattern contributes significantly to income differences across demographic groups.

Immigration status plays an important role in shaping job outcomes. Work permit holders are usually recruited for highly specialised roles requiring skills not readily available on island. Spouses of Bermudians and PRC holders often have broader access to the labour market and sometimes

benefit from international experience or networks. Although Bermudians have full rights to work, many still face barriers to higher paying roles, including differences in education, professional exposure, and industry experience.

Overall, the data shows that income and job outcomes in Bermuda are shaped by a combination of race, immigration status, and access to certain industries or skill sets. Historical and systemic barriers have also contributed to long standing wage gaps and limited opportunities for certain groups.

This legislative proposal aims to improve pay transparency and create a workplace culture where pay is determined by the actual value of the work performed, not by discriminatory factors. Greater transparency supports fairness and accountability and encourages employers to adopt equitable pay practices.

The proposal also strengthens protections for employees by ensuring confidentiality during investigations and safeguarding workers from retaliation if they raise concerns. Improving enforcement and increasing public awareness helps ensure these standards are followed. In the long run, both workers and employers benefit from a fairer and more motivated workforce. This policy supports the Government's broader goals around social justice and economic fairness and helps address the wage gaps that have historically disadvantaged certain groups in Bermuda.

CURRENT SITUATION

The Bermuda Human Rights Act 1981 (HRA 1981) protects people from discrimination based on sex, race, colour, ethnicity, or national origin. When it comes to employment, section 6 of the Act says that employers cannot pay someone less than another person doing almost the same job, where the work requires similar education, skills, experience, effort, responsibility, and takes place under similar working conditions.

There are a few exceptions where different pay is allowed. These include situations where pay differences are the result of:

- a seniority system (for example, pay increasing with years of service),
- a merit system (where pay is based on performance), or
- a system where earnings depend on how much or how well a person produces work.

The Act also protects employees from retaliation if they exercise their rights, for example, by making a complaint. The HRA 1981 takes priority over other laws and applies to everyone in Bermuda, including all employers and employees.

Complaints about discrimination under the Act are handled by the Human Rights Commission. The Commission's Executive Officer will investigate and try to resolve the issue through mediation, conciliation, or mutual agreement. If a resolution cannot be reached, the case is sent to the Human Rights Tribunal ("HRT").

The Human Rights Tribunal has the authority to:

- order someone who has breached the Act to fix the problem and pay financial compensation,
- refer the case for prosecution if a criminal offence has occurred, and
- order one party in the dispute to pay another party's costs, as well as Tribunal costs, up to \$1,000.
- Decisions of the Tribunal can be appealed to the Supreme Court.

Instead of going through the Human Rights Commission, an individual may also choose to bring a case directly to the Supreme Court for breach of statutory duty. This option is allowed under section 20A of the HRA 1981.

While the HRA 1981 is an important protection against wage discrimination based on gender, race, and ethnicity, especially for people doing substantially similar work, it is mainly a *reactive* law. This means it deals with problems after they have happened and relies on individuals to come forward with complaints.

In contrast, Pay Transparency Legislation is *proactive*. Rather than waiting for inequalities to occur, it aims to prevent them. It does this by requiring employers to share salary ranges, explain how pay is determined, and be more open about their compensation systems. These are not only human rights issues, they are also about good employment governance and help ensure fair and consistent workplace practices every day.

Currently, Bermuda's Employment Act 2000 (EA 2000) does not include specific rules about pay transparency. The EA 2000 mainly covers minimum workplace standards such as wages, hours of work, rest breaks, and protection against unfair dismissal.

THE POLICY PROPOSAL

The Ministry of Economy and Labour is committed to reducing wage gaps based on gender, race, and ethnicity, as highlighted in *The Bermuda Job Market Briefs (August 2023)*. One of the main ways to achieve this is by increasing pay transparency so that all workers can be confident they are being paid fairly.

Although the Human Rights Act 1981 protects employees from discrimination, it does not deal directly with pay transparency. It does not require employers to share salary ranges, explain how pay decisions are made, or identify pay inequities before complaints arise. In contrast, several international regions, such as the European Union, have introduced strong pay transparency rules. These include publishing salary ranges, banning questions about a person's salary history, and requiring employers to report gender pay gaps. These kinds of measures have helped create fairer workplaces and make employers more accountable.

Instead of copying foreign laws, Bermuda can build on its own strong legislative foundation. A helpful example already exists in the Employment (Minimum Hourly Wage Entitlement) Act 2022 ("The Act"). This law not only set a minimum hourly wage rate but also created a strong enforcement system. Under it, Labour Inspectors can visit workplaces, check payroll records, investigate complaints, and issue enforcement notices when employers are not complying.

This proactive, inspection-based approach provides an ideal model for advancing pay transparency.

By using this framework, Bermuda could require all employers to have Pay Transparency Policy Statements. These statements would include salary bands for each role, clear criteria for how pay decisions are made, and confidential mechanisms for employees to access pay-related information or raise concerns without fear of retaliation.

To ensure employers follow these rules, Labour Inspectors, much like under the Act, could be empowered to:

- check that employers have created and communicated their Pay Transparency Policy Statements,

- investigate complaints about employees not receiving pay information,
- guide employers on how to meet their responsibilities,
- refer ongoing or serious issues (such as repeated non-compliance or evidence of discrimination) to the Employment and Labour Relations Tribunal, and
- focus on ensuring processes are followed and investigating complaints when they arise.

This approach is consistent with international best practices but is more suitable for Bermuda's size and labour market. For example, the European Union requires salary range disclosures and justifications for pay gaps, while Iceland requires employers to obtain an equal pay certification through independent audits. Other regions, such as Belgium and Ontario, Canada, require employers to develop internal pay transparency policies. However, these systems often apply only to large employers or depend heavily on external audits, which may not be practical for a smaller jurisdiction like Bermuda.

Bermuda's model offers several advantages. It encourages employers to proactively comply with clear rules, integrates transparency into daily workplace operations, and empowers employees with accessible information and protections. Most importantly, it allows Bermuda to develop a solution that fits its own legal and workplace environment, instead of adopting approaches that may not work as well locally.

Of course, there will be challenges. Employers may need guidance to develop strong transparency policies. Consistent oversight is necessary to ensure real compliance, not surface-level efforts. Some industries may also resist greater openness about pay, especially if past practices have not been transparent.

Still, by adapting an enforcement model that already works well in Bermuda, the country can promote pay equity in a way that is practical, modern, and aligned with international standards, while remaining rooted in local realities.

If designed and implemented carefully, this initiative could make Bermuda a leader in fair and inclusive labour policy and help close long-standing wage gaps across the workforce.

PAY TRANSPARENCY DRAWBACKS

While pay transparency can support fairness and help reduce wage gaps, it also has some potential downsides that need to be considered.

Research shows that when salaries are made public, some employers may respond by standardising pay. This can reduce flexibility in compensation and may even lead to lower overall salaries, as companies try to avoid any appearance of unfairness.

Sharing salary information can also affect morale. When employees learn what their colleagues earn, some may feel dissatisfied or undervalued, especially if they believe their pay does not reflect their contribution. This can reduce motivation and productivity.

There is also a risk that high performing employees may leave if they realise they can earn significantly more elsewhere. This makes retaining top talent more challenging for employers.

Greater transparency can sometimes create tension among employees. If people see pay differences they don't fully understand, workplace relationships and team dynamics may suffer. This could harm the overall workplace culture.

Finally, when salary becomes a more visible part of employment, employees may start to focus more on pay and less on other aspects of their job, such as professional growth, meaningful work, or long term career development. This shift in focus can affect overall organisational performance.

WHY THIS MATTERS

There are several benefits to increasing pay transparency in the workplace. When employers are open about pay, it becomes easier for workers to spot and challenge unfair differences in pay, especially between women and men. Research from many countries shows that pay transparency is linked to reducing wage gaps and, in some cases, eliminating them completely across gender, race, ethnicity, sexual orientation, and other areas of diversity. Because pay bias is often unintentional or unconscious, transparency helps employers recognise patterns they may not have noticed and correct pay differences that cannot be justified by legitimate factors such as experience or performance.

Studies also show that pay transparency is important for attracting talent. Around 80% of jobseekers say they are less likely to apply for a position if the salary is not listed, and about 20% will only apply to jobs that include salary information. Being open about pay structures and how salaries are determined can help organisations close gender, race, and ethnicity pay gaps more quickly. With clear information, employers can identify any disparities sooner and take action to address them.

For employees, access to accurate information about pay scales provides an important safeguard. If someone believes they are being paid unfairly, transparent pay data gives them a clear basis to raise concerns or challenge potential discrimination. This strengthens accountability and supports a culture of fairness and equity across the organisation.

CONCLUSION

The introduction of Pay Transparency Legislation is an important step in Bermuda's efforts to make workplaces fairer. By putting pay transparency into law, Bermuda is following successful international practices but also creating a system that fits the island's own needs and values. This legislation will give employees more confidence, encourage employers to be more accountable, and create a clear way to address unfair pay differences.

For this to work well, everyone has a role to play, employers, employees, and the Government. Employers will need to use fair and unbiased criteria when setting pay and hiring staff. At the same time, the Government will need to give guidance and support, especially to smaller businesses, to help them meet the new requirements.

If all stakeholders work together, Bermuda can reduce pay gaps linked to gender, race, and ethnicity. This approach can also serve as a strong example for other countries. With proactive compliance, proper oversight, and a commitment to openness, Bermuda has the opportunity to lead the way in creating fair, inclusive, and transparent workplaces.

RECOMMENDATIONS

To help make pay fairer across Bermuda, it is recommended that the Government build on an approach that is already working well under the Minimum Wage Act. This would involve using a similar enforcement framework to ensure that employers comply with the rules and that wage disparities are properly identified and addressed.

The core elements of this proposal are as follows:

- **Mandatory pay transparency and equity policies**

Every employer in Bermuda would be required to develop and maintain a simple written policy on pay transparency and equity. This policy would affirm the employer's commitment to fair, non-discriminatory pay practices.

- **Clear, objective salary-setting criteria**

Employers would be required to explain how pay is determined, using objective factors such as:

- the nature and responsibilities of the role
- an employee's qualifications
- relevant skills and experience

- **Employee access to pay information**

Employees would have the right to request information about the salary range for their role, promoting openness and reducing uncertainty around pay.

- **Restrictions on salary history inquiries**

Employers would no longer be permitted to ask job applicants about their past or current salary during the recruitment process.

- **Salary ranges in job advertisements**

All job advertisements would be required to include a salary range, ensuring that applicants understand expected pay before applying.

To ensure these requirements are followed, Labour Inspectors would play a central enforcement role, including:

- verifying that employers have created and communicated compliant pay transparency policies
- investigating complaints raised by employees
- referring serious or repeated issues, such as ongoing non-compliance or retaliation, to the Employment and Labour Relations Tribunal
- issuing penalties where employers fail to meet their obligations

Finally, pay transparency should be embedded as a standard feature of Bermuda's employment legislation. This approach aligns well with the existing legal framework while reflecting international best practices. By adopting these recommendations, Bermuda can move closer to ensuring fair pay for all workers and fostering a more open, equitable workplace culture across the island.

We invite members of the public, employers, employees, and industry stakeholders to visit forum.gov.bm and share their views on the proposed Pay Transparency Policy. Your feedback is essential in helping the Government ensure that the legislation is practical, fair, and reflective of Bermuda's needs.



GOVERNMENT OF BERMUDA
Ministry of Economy and Labour