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Employment 2025

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Contributing Editor

Tobias Pusch
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Chambers

Global Practice Guides

Employment

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2025

Chambers Global Practice Guides

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INTRODUCTION

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Pusch Wahlig Workplace Law is one of Germany's leading employment law firms. A dedicated team of 70 employment specialists in six locations provides legal advice all over Germany. The practice has particular experience in business restructuring, including mass workforce reductions, as well as reconciliations and social plans. The law firm further advises on compliance, remuneration and works council matters and represents companies in employment litigation, as well as on the implementation of SE structures and

employment-related data protection. The mandates originate from a variety of sectors including financial services, technology, FMCG and many more, and the firm advises both large multinational corporations as well as prominent start-ups. As a member of L&E Global, Pusch Wahlig Workplace Law is one of the cornerstones of a leading global alliance of employment law firms and regularly advises clients on cross-border matters.

Contributing Editor



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INTRODUCTION

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Introduction

The Chambers Employment Guide 2025 introduces employment law matters across 45 jurisdictions. The Guide contains the latest legal information from around the globe on the main changes in employment law that have been enacted or decided in the past year, general remarks on employment contracts and conditions, non-compete and non-solicitation clauses, the data privacy law, the employment of foreign workers, “new work”, the role of unions, termination of employment, employment disputes and dispute resolution.

Employment Law

People are at the core of every company’s potential for added value. They manage the ongoing business and develop innovations for future progress and growth. This is why the key component for success in any organisation is how its people work together. The way in which this co-operation is achieved and the framework within which organisations can shape it is regulated by employment law. Due to the relationship of superiority and subordination between employer and employee, the employer enjoys a considerable advantage within this framework. Employment law therefore acts as a balance between the contractual freedom of the parties on the one hand and the protection of employees on the other.

To further redress the disparity between employer and employee, most jurisdictions provide for collective employment law in addition to individual employment law. Individual employment law deals with the legal relationship between the employer and the employee, while collective employment law deals with matters between employers or their coalitions (employers’ associations) and trade unions or co-determination bodies (eg, works councils).

Further peculiarities arise in the event of disputes. In employment law, the economic interests of the parties are particularly important. Employers pursue economically calculated goals; employees rely on their employment relationship for their livelihood. In practice, this often requires quick, pragmatic and interest-driven solutions. More than in almost any other field of law, negotiation skills are indispensable in order to

succeed in employment law and cannot be replaced by mere legal expertise.

Global Employment Law

Employment law is primarily national law – the scope of application of employment laws is determined by national boundaries. This leads to different practical implementations and regulations in different countries. One advantage of this is that the states concerned can individually adapt regulations to their requirements and structures. However, in a world where cross-border relationships, takeovers and international contracts have become common practice, this approach can also lead to difficulties, precisely because regulations are designed and applied individually by each country. It is therefore imperative for managers and HR staff not only to know the local employment law standards, but also to have a more general overview and to be aware of the standards in other countries.

As an aftermath of the global COVID-19 crisis, companies recognised that there was less need than previously for a constant workforce in the office, and they became more receptive towards remote working arrangements. As a result, there has been a global trend towards more flexible working models. As employees strive to work flexibly around the globe, local employment laws are reaching their limits. At the same time, countries have been concerned with amending legislation to ensure the health and safety of employees taking advantage of these new possibilities.

Current Developments

Several current developments have influenced employment law globally in recent years and will continue to do so in the future.

Flexible work models

Models such as working from home, mobile working, video conferences and desk sharing have been part of the modern world of work since the COVID-19 crisis at the latest. Along with new regulations come a variety of laws that aim to support a healthy work-life balance as the two areas become increasingly blurred. A good example can be found in Belgium, which has implemented a law which foresees the “right to disconnect from work”.

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Work-life balance

Companies around the world are increasingly concerned with work-life balance as a non-monetary incentive in the competition for the best staff members. Many legislators are supporting this trend with regulations that make it easier to combine family and career, with a particular focus on combating the growing shortage of skilled workers. In Europe, this has been driven mainly by the need to adopt EU directives in national law. These include, for example, the right to paid birthday leave and parental leave in many EU member states, as well as regulations regarding part-time working models and provisions regarding remote working.

Inflation crisis

Rising inflation is also having a global impact. On top of significant financial losses during the COVID-19 crisis, a global slowdown in economic growth – driven in part by the Russia-Ukraine war and the global energy crisis as well as the COVID-19 aftermath – has caused a striking fall in real monthly wages in many countries. The cost of living has increased rapidly, with a particularly significant impact on low-income groups.

While schemes such as short-time work compensation and wage subsidies have largely protected wage levels from the effects of the pandemic, adequate adjustment of minimum wage rates could be an effective tool to help maintain purchasing power and living standards in the current inflation crisis.

Supply chains

There are also developments regarding the fair treatment of staff in supply chains. The global aim is to improve the protection of human rights all the way along global supply chains. To meet this objective, the prohibition in particular of child labour and forced labour is to be enforced and controlled, as well as the prohibition of substances that are harmful to people and the environment. As early as June 2011, the Human Rights Council issued the UN Guiding Principles on Business and Human Rights. These principles aim to address violations of human rights in the context of economic activities. In order to effectively implement these values and principles adopted by the UN, the German government, for example, is pushing for internationally comprehensive standards regard-

ing fair global supply and value chains with its own national legislation. The German Act on Corporate Due Diligence Obligations in Supply Chains (*Lieferkettensorgfaltspflichtgesetz* – LkSG) is the binding implementation of the UN Guiding Principles and came into force in January 2023. As of January 2024, the law was extended to cover companies with 1,000 or more employees (previously 3,000 or more), thereby significantly increasing the number of companies subject to its obligations.

Whistle-blower protection

One of the most significant European and global developments has been the adoption of the Whistle-blowing Directive in national law by EU jurisdictions. Although most member states have now implemented the directive, many initially gave employers a period of grace in which to establish internal reporting processes, some of which will soon expire.

Outside Europe, countries are also encouraging employees to report information on violations of laws or regulations they become aware of at work. In Singapore, for example, the Ministry of Manpower recently took steps to raise awareness of the various channels through which workers can report health and safety problems at work, and to provide legal protection for workers who raise concerns.

Transparency

Global developments in the area of transparency – particularly pay transparency – are likely to continue since the entry into force of the EU Pay Transparency Directive in April 2023. Member states have three years to implement the directive into national law, which will lead to significant changes for many member states. However, the current status is that only Belgium implemented the Directive, a few member states published draft laws, whilst most other countries (including Germany) are still in the preparatory phase. There have also been developments in this area outside Europe, including in the US, where New York has become the latest US state to introduce legislation on pay transparency in job advertisements.

Equal pay

There have also been a number of recent developments in case law on equal pay. In Germany, for exam-

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ple, the Federal Labour Court recently rejected an employer's attempt to justify a pay gap between men and women on the basis of pay negotiation variations. As of mid-2025, Germany has not yet implemented the EU Pay Transparency Directive. However, the German government is expected to revise the existing Pay Transparency Act (*Entgelttransparenzgesetz* – EntgTranspG) with a draft bill anticipated in late 2025.

Climate crisis

The climate crisis will have a lasting impact on employment law. The conditions under which work is performed vary in terms of carbon footprint. One example is the efforts by employers to minimise travel distances and the associated CO₂ emissions caused by employees travelling to work. In terms of employment law, this means that regulations regarding remote working or the promotion of climate-friendly means of transport are relevant. The sustainable use of resources and the reduction of transport distances require global production chains to be set up more locally in different locations. A correspondingly closer linkage of operational processes requires global alignment and more flexible options under employment law.

The Guide's Purpose

Employment law is always in a state of flux and is constantly faced with new challenges due to ever-evolving technology and digitalisation, as well as social developments. Thus, new working models are regularly introduced all over the world and methods are developed to adapt work to modern lifestyles, the needs of society and the circumstances of everyday life. A variety of measures, which differ from country to country, have not infrequently led to highly divergent and sometimes contradictory results. A comparative view of local employment laws in international relations would thus appear essential in a globalised world of work.

Remaining apprised of new legal developments and maintaining the visibility of these on the horizon continues to be critical for employers. As employment laws differ from country to country, this guide aims to answer the most relevant questions in employment law in its participating countries and to provide an insight into current issues.

AUSTRIA

Law and Practice

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Edthaler Leitner-Bommer Schmieder & Partner Rechtsanwälte GmbH is a dynamic law firm in Austria that specialises in business law, with locations in Linz, Vienna, Graz, Dornbirn, Ried, Kitzbühel, Budapest and Prague. The firm's labour law expert team consists of two partners, two attorneys and two associates. The firm advises national and multinational corporations, as well as small and medium-sized businesses from all industry sectors on all issues related to labour law. This includes comprehensive

advice on individual employment law and collective employment law, representation before all courts and government agencies as well as support when in negotiations with works councils, trade unions, or other interest groups. The firm is currently representing two companies on the issue of the continued validity of the works council's power of representation in the course of a restructuring, as well as two individuals in litigation concerning the infringement of trade and business secrets.

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1. Employment Terms

1.1 Employee Status

Labour law protects different types of workers. The different groups of workers are outlined below.

White-Collar and Blue-Collar Workers

A distinction is made between white-collar workers (“employees”) and blue-collar workers. The term “employee” is defined in the Employees Act (*Angestelltenengesetz*). A person’s white-collar status is contingent upon the nature of their employer and the duties they undertake.

Employees are predominantly employed in the commercial sector, the higher, non-commercial services sector or the office sector.

The term blue-collar worker is not defined by law. However, based on case law, any worker not identified as a white-collar employee typically falls under the category of “worker”.

Different rules apply to blue- and white-collar workers, especially in the following areas:

- reasons for early termination of the employment relationship;
- in works constitution law (separate works councils for blue- and white-collar workers);
- the eligibility criteria for invalidity/occupational disability pensions; and
- separate collective agreements in many sectors.

Apprentices

Apprentices are persons who, on the basis of an apprenticeship contract, receive technical training in an apprenticeship company to learn an apprenticeship occupation included in the list of apprenticeship occupations and who work within the framework of this training. The Austrian Vocational Training Act (*Berufsausbildungsgesetz*) regulates, among other things, training, the rights and duties of apprentices and persons entitled to apprenticeship, apprenticeship income and entitlements in the event of work incapacity. Unless otherwise stipulated by this law, the provisions of general labour law (eg, leave entitlement) apply to apprentices.

Marginal Employees

A person is considered to be in marginal employment if he or she earns no more than a certain amount per month in regular employment (employment for one month or for an indefinite period). In 2025, the marginal earnings threshold is EUR551.10 per month. Employees in marginal employment are covered by accident insurance but not insured against unemployment.

The same labour law provisions apply to marginally employed employees as to all other employees. It may be that collective agreements contain special provisions.

1.2 Employment Contracts

The employment relationship is a continuing obligation between employer and employee. A contract of employment is regularly concluded for an indefinite period. A contract of employment may also be limited in time until the expiry of a certain date or until the occurrence of a certain event. The succession of several fixed-term employment contracts is inadmissible unless each fixed-term is justified by an objective reason.

Formal Requirements for Employment Contracts

The conclusion of an employment contract is not bound to any particular form. It can be in writing, verbally or implied. An exception exists only in certain cases.

The employer is obliged by law to issue a service note irrespective of the duration of the employment relationship. The service note must contain certain information specified in the law as follows:

- name and address of the employer;
- name and address of the employee;
- the start of the employment relationship;
- the end date of the employment relationship (in case of fixed-term employment);
- duration of the notice period and date of termination – reference to the termination procedure to be followed;
- usual place of employment – if necessary, reference to changing places of employment – registered office of the company;

- any classification in a general scheme;
- intended use/activity of the employee with the respective employer and brief description of the work to be performed;
- initial remuneration (basic remuneration and other remuneration) and due date of remuneration – remuneration for overtime if applicable and method of payment of remuneration;
- extent of annual leave;
- agreed normal daily or weekly working hours of the employee, unless the employment relationship is one to which the Caretaker Act applies, and, if applicable, information on the conditions for changing shift schedules;
- designation of any standards of collective legal organisation applicable to the employment contract (collective agreement, articles of association, minimum wage scale, fixed apprentice compensation, and works agreement) and reference to the room in the company where these are available for inspection;
- name and address of the employee's social insurance institution and occupational pension fund;
- duration and conditions of an agreed probationary period; and
- if applicable, the entitlement to further training provided by the employer.

Either a service note must therefore be issued or an employment contract containing this information.

In principle, an employment contract only has to contain the statutory minimum content of a service note. In the context of concluding an employment contract, in practice, additional provisions (beyond the statutory minimum content) are usually made regarding the employment relationship (eg, fixed term, competition clause, and expiry provision).

1.3 Working Hours

General Working Hours Per Day/Week

The statutory normal working time is eight hours per day and 40 hours per week (excluding rest breaks). Many collective agreements provide for a reduced normal working week (eg, 38.5 hours per week). If the normal daily or weekly working hours are exceeded, the employee in principle works overtime.

An extension of normal working hours is possible within the framework of various flexible working time models. Models of flexible working time are, for example, the calculation of working time or flexible working time. In the case of a four-day week, the normal daily working time may be extended to ten hours. The details of flexible working time models can be found in various collective agreements.

Extra Work

In collective agreements that standardise a normal working week of less than 40 hours, the period between the normal working time according to the collective agreement and the statutory normal working time is referred to as extra work (*Mehrarbeit*). The collective agreements determine whether this time is remunerated with a supplement or without.

Overtime

Overtime (*Überstunden*) is generally defined as working hours that exceed the normal daily or weekly working hours. They are permitted in the case of increased work demand – however, the employee has a right of refusal.

Pursuant to the Working Time Act (*Arbeitszeitgesetz*), employees working overtime are entitled to:

- a supplement of 50%; or
- compensation in the form of compensatory time (one overtime hour corresponds to 1.5 hours of compensatory time).

The employer and the employee can agree on how overtime is to be compensated (money, time off in lieu or a combination of both).

The maximum daily working time is 12 hours per day and the maximum weekly working time is 60 hours – but permanently no more than 48 hours per week on a 17-week average. The applicable collective agreement may allow for an extension of the calculation period.

Part-Time Employees

For part-time employees, extra work comprises hours that go beyond their agreed-upon weekly schedule but have not reached the threshold of overtime. The

law stipulates that for these additional hours, part-time employees are entitled to a 25% surcharge on their regular hourly wage.

Extra hours are not subject to extra pay:

- if they are compensated by time off in the ratio of 1:1 within the calendar quarter or another fixed period of three months in which they have accrued; or
- in the case of flexitime, the agreed working time is not exceeded on average within the flexitime period.

If collective agreements with shorter normal weekly working hours provide for no or lower bonuses for the extra work (eg, in the case of a collectively agreed normal weekly working time of 38.5 hours and bonus-free extra work of a further 1.5 hours), this overtime regulation shall also apply to part-time employees.

If several surcharges, eg, the statutory or collective agreement surcharge, are provided for the additional time worked, only the highest surcharge shall be paid. There is not a cumulative addition of these surcharges.

In connection with the organisation and remuneration of working time, the provisions of the applicable collective agreement must always be observed. Collective agreements may contain special provisions.

1.4 Compensation

Minimum Wage Requirements

There is no statutory minimum wage in Austria. Whether there is an entitlement to a certain minimum wage depends primarily on whether a collective agreement is applicable in the respective company. The applicability of the collective agreement results from the employer's affiliation to a contracting association.

If a collective agreement applies in the enterprise, each employee shall be classified according to the scheme of the applicable collective agreement, taking into account previous periods of service. The classification is usually based on the job characteristics, the content of the work and the actual predominant activity.

Where no collective agreement is in force, an administrative body responsible for authorising associations to conclude collective agreements (*Bundeseinigungsamt*) may set a minimum wage under certain conditions. As there is a collective agreement in most sectors, there is only a minimum wage agreement for a few occupational groups (eg, domestic help and caretakers).

Statutory Increases in Minimum Wages

Typically, the minimum remuneration outlined in collective agreements undergoes yearly increases. These increases are negotiated between the trade unions as employee representatives and the respective employer representatives (Austrian Economic Chambers or Liberal Professions Associations). If there is no collective agreement, there is no compulsory entitlement to a wage or salary increase. The employee and the employer must agree on this individually. However, wages or salaries should not be set at an unjustifiably low level that could be considered unethical or exploitative.

Entitlement to Special Payments

Salaries are usually paid monthly 12 times a year. However, there is also the possibility of receiving special payments such as a 13th and 14th salary (holiday and Christmas bonuses). The entitlement, amount and due date of these special payments are regulated in the respective collective agreement or individual employment contract. With a few exceptions, the law does not provide for these payments. The respective collective agreement may also provide for other payments, such as anniversary bonuses or additional payments to compensate for specific conditions of a job role, such as working in dirty environments, facing potential dangers, or enduring particularly challenging conditions. Otherwise, bonuses, etc, can be contractually agreed between the employer and employee.

1.5 Other Employment Terms

According to the Paid Annual Leave Act (*Urlaubsgesetz*), employees are entitled to five weeks of paid leave (30 working days for a six-day working week or 25 working days for a five-day working week) for each working year (leave year). If the employee is regularly employed for only five or fewer days of the week, the leave entitlement shall be converted into the

corresponding working days. From the 26th year of service with the same employer, the amount of leave increases to six weeks. Under certain conditions, certain periods of previous service may already be taken into account for the leave entitlement.

Leave entitlement generally expires after two years from the end of the leave year in which it arose.

Holiday Pay

During leave, an employee is entitled to continued payment of remuneration (holiday pay), even if no work is performed. Holiday pay includes the basic wage/base salary and other remuneration (eg, bonuses, commissions, allowances and overtime) on average.

Entitlement in the Event of Illness

If an employee cannot work for health reasons that were not their fault or caused through gross negligence, he/she is entitled to continued payment of remuneration for six weeks per working year. The entitlement to continued payment of remuneration increases to up to 12 weeks depending on the duration of the employment relationship. For each additional four weeks, the employee remains entitled to half pay. The other half is covered by social insurance. After the period of continued payment of remuneration, sickness benefits from social insurance are due.

Entitlement in the Event of an Occupational Accident

If an employee is prevented from performing his/her work due to an accident at work or occupational disease, he/she shall retain his/her entitlement to remuneration for up to eight weeks per working year. The entitlement to remuneration shall be increased to ten weeks if the employment relationship has lasted for 15 years without interruption.

Care Leave

An employee shall be entitled to continued payment of remuneration up to the maximum of his/her regular weekly working hours if, after commencement of employment, he/she is absent from work as a result of:

- nursing leave (care required for a close relative, who is ill – living in the same household is not required);
- nursing leave (care for a sick person with whom one is not related but who lives in the same household);
- care leave (care required for one's child, if the responsible caregiver is unavailable); or
- accompanying leave (accompaniment of a child under ten years old by the parents during inpatient hospitalisation).

Legal Entitlement to Time Off to Accompany Children During Rehabilitation

Since 1 November 2023, employees are entitled to up to four weeks' leave per year to accompany their child, who is not yet 14 years old, during rehabilitation. From the notification of the claim until the expiry of four weeks after the end of the rehabilitation leave, the employee is under special protection against termination and dismissal.

Employees are entitled to care leave benefits during this time.

Maternity Leave

Protection period for expecting mothers

As a general rule, expectant mothers are prohibited from working eight weeks before their child's due date. This employment restriction typically continues for eight weeks following the birth. In the case of premature or multiple births, or caesarean section, the period is extended to twelve weeks. If the pre-birth non-working period is reduced, an equivalent extension is granted post-birth, but up to a maximum of 16 weeks. During this time, they receive a maternity allowance from the Austrian Social Insurance. The employer does not pay any remuneration during the protection period.

Parental Leave

Mothers or fathers are entitled to take parental leave up to the day before their child's second birthday. This is in addition to the maternity leave. It is possible to apply for childcare allowance during maternity leave as mothers or fathers do not receive any remuneration from the employer during that period.

The full entitlement to parental leave of 24 months is only available if both parents take at least two months of parental leave. If only one parent takes parental leave, the duration is reduced to 22 months. There is an exception for single parents: they can still take parental leave until the child's second birthday.

Employee Liability

Employees are only liable to a limited extent for damage they have caused at work. Their financial capacity is taken into account when determining the extent of their liability. For employees to be liable, damage must actually have occurred during the performance of the service. The damage must be the fault of the employee and there must be no grounds for exclusion of liability. The claim must not have lapsed or become time-barred. These provisions are regulated in the Employees' Liability Act (*Dienstnehmerhaftpflichtgesetz*).

2. Restrictive Covenants

2.1 Non-Competes

Agreement of Non-Compete Clauses Between Employer and Employee

A non-compete clause is an agreement that restricts the employee's employment in favour of the employer for the period after termination of the employment relationship. A non-compete clause can be agreed upon in employment contracts.

The precondition for the admissibility of a non-compete clause is that the employee:

- is of age at the time of the conclusion of the agreement; and
- is entitled to remuneration (excluding special payment components) of more than EUR4,300 gross (for the year 2025) for the last month of the employment relationship.

The restriction of gainful employment contained in the non-compete clause may only relate to the business sector of the relevant enterprise and may not exceed one year. At the same time, it must not deprive the employee of any possibility of gainful employment.

Violation of Non-Compete Clauses

If an employee violates a valid non-compete clause, the employer has several options. The employer can:

- claim damages; or
- pursue legal action to ensure the employee ceases the competing activity.

Enforcement of Non-Compete Clauses

The non-compete clause may generally only be invoked if:

- the employee terminated the contract without a valid reason;
- the employee resigned without a valid justification;
- the contract was amicably terminated;
- the fixed term ended; or
- the employer dismissed the employee due to the employee's own actions.

The successful assertion of a claim for damages usually fails because the amount of the damage incurred cannot be quantified with the legally necessary clarity. For this reason, it is possible to agree on a contractual penalty. Such a contractual penalty can be claimed in the event of a breach of the non-compete clause without having to prove the occurrence of damage. However, it is subject to the judicial right of moderation and is only effective if it does not exceed six times the net monthly remuneration due for the last month of the employment relationship. The agreement of a contractual penalty excludes claims for injunctive relief or compensation for further damage.

2.2 Non-Solicits

In addition to the agreement of a general non-compete clause, non-solicitation clauses with reference to employees and with reference to customers may also be agreed between an employer and employee.

Employee Protection Clause

The term employee protection clause covers agreements according to which the employee may not work with the employer's employees after termination of the employment relationship. Employee protection clauses are usually to be qualified as non-compete clauses and must not restrict the former employee too much.

Customer Protection Clause

An agreed customer protection clause aims to protect the employer's customer base and to prevent the poaching of the existing customer base. Customer protection clauses are generally regarded as non-compete clauses by case law. The statutory provisions on non-compete clauses are therefore to be applied *mutatis mutandis*.

3. Data Privacy

3.1 Data Privacy Law and Employment

During the employment relationship, employee data is stored, processed and forwarded and further data is collected, eg, during employee checks. Data protection provisions in the context of labour law can be found in both the EU General Data Protection Regulation (GDPR) and the Austrian Data Protection Act (*Datenschutzgesetz*).

4. Foreign Workers

4.1 Limitations on Foreign Workers

The employment of foreign nationals in Austria is guided by the Act Governing the Employment of Foreign Nationals (*Ausländerbeschäftigungsgesetz*).

Foreign workers can only be employed in Austria under certain conditions. In connection with the employment of workers, every person who does not have Austrian citizenship is considered a foreigner. The employment of foreign workers in Austria is only permissible if they are generally excluded from the scope of application of the Act Governing the Employment of Foreign Nationals or if they have official approval for their employment. The Act Governing the Employment of Foreign Nationals provides for a large number of exemptions for various groups of persons. Exempted are, for example, persons entitled to asylum, artists or certain executives.

Furthermore, there are – among others – the following possibilities for the official approval of the employment of a foreigner:

- Red-White-Red Card/Blue Card EU – qualified workers from third countries can settle permanently in Austria and work here with the Red-White-Red Card/Blue Card EU; and
- access to the labour market for pupils and students – pupils and students with an appropriate residence permit may also be gainfully employed if this does not interfere with their education as their primary purpose of residence.

The specific type of employment permit that a foreign national must obtain is determined based on their individual circumstances. In addition to the criteria of the Act Governing the Employment of Foreign Nationals, the requirements under immigration law for the residence of a foreign national in Austria must be observed.

4.2 Registration Requirements for Foreign Workers

Foreign workers require a combined work and residence permit allowing employment with a specific employer (eg, Red-White-Red Card), free employment market access (eg, Red-White-Red Card plus, Permanent Residence – EU) or an employment market authority authorisation (employment permit) in addition to their residence permit (eg, students) or visa (seasonal workers). This depends on the specific individual case.

5. New Work

5.1 Mobile Work

In Austria, as of 1 January 2025, the legal framework for “home office” has been extended to telework. In the past, there were no general statutory rules on mobile work, and legal provisions only applied to work from home. With the new law, the distinction between home office and telework loses importance. The provisions that were previously limited to home office now apply to telework in general.

Telework is understood to mean the regular performance of work outside the employer's premises, either at the employee's residence or at another location of their choice. This may include, for example, a relative's home, libraries, coffee shops, or co-working spaces.

Employers and employees cannot unilaterally impose telework. Any agreement must be made in writing. Collective bargaining agreements may provide for framework conditions of telework; however, these provisions only apply if they are more favourable than the statutory rules. Framework conditions may also be agreed by works agreements, in particular regarding the provision and private use of work equipment, cost reimbursement, or a right to return to on-site work.

Employees in telework remain “regular employees” under Austrian labour law. All employment law provisions fully apply, including working time rules, holiday entitlement, parental leave, and equality law. Employers are obliged to provide the necessary digital work equipment (such as laptop, phone, and internet access). If employees use their own devices, they are entitled to reimbursement of reasonable and necessary costs, which may also be paid in the form of lump sums.

The same data protection obligations apply in telework as in the office, including requirements for data security and confidentiality. Employers and labour inspectors may not enter employees’ homes to verify compliance without the employee’s consent. The Employees’ Liability Act applies to telework, extending liability relief to damages caused by household members or pets during telework.

Austrian Social Security Regulations for Cross-Border Home Office Work

In principle, the “normal” provisions of Regulation (EC) No 883/2004 apply in relation to other EU/EEA states. This means that if the employee works at home for at least 25% of the time, the employee’s country of residence is responsible for social insurance. The EU is currently working on a pan-European solution to facilitate cross-border telework.

In the absence of current legal regulations, the framework conditions for mobile work are to be agreed between the employee and the employer. However, the government is currently considering whether the regulations for home office should now also be extended to mobile working.

5.2 Sabbaticals

In Austria, “sabbatical” is not a legally defined term, but a term that has arisen in practice for different forms of professional leave. A sabbatical is usually understood as a long-term leave agreed between the employee and the employer.

The following contractual bases are possible as legal bases for long-term leave in the form of a sabbatical.

Agreement on Unpaid Leave

In this context, it should be noted that compulsory insurance continues during unpaid leave of up to one month. This is subject to the condition that the employment relationship is not terminated during this period. If the unpaid leave is agreed for longer than one month or if the employment is not continued after the end of this month, the insured person shall be deregistered as of the day before the start of the unpaid leave.

Agreement on Educational Leave

In Austria, the current scheme of educational leave will be replaced by the new “educational time” model from 2026 onwards. Educational time can be agreed between the employer and the employee after at least one year of employment (or 12 months within the last 24 months and at least three months immediately prior to commencement in seasonal businesses). The leave may last for a minimum of two months up to one year without pay.

During this period, employees are entitled to an educational allowance, provided they meet the eligibility requirements under unemployment insurance law and complete further training. Under the new regime, the minimum training requirement is increased to 20 hours per week (16 hours in the case of childcare obligations). In the case of university studies, at least 20 ECTS (European Credit Transfer and Accumulation System) credits must be earned (16 with childcare obligations). Attendance obligations are strengthened, with a focus on seminar-style courses in-person or live-online, and employees must provide proof of participation.

Further innovations include mandatory educational counselling before applying for the allowance, an

increased minimum amount of the allowance to facilitate participation by low-income earners, and stricter rules on timing: educational time may not immediately follow parental leave, with at least 26 weeks of employment subject to unemployment insurance contributions required in between. Moreover, employers are expected to face new obligations, such as financial contributions to costs and retention requirements for employees after completion of the educational measure.

Agreement on a Leave of Absence Without Pay

A leave of absence without pay may be agreed for a period of at least six months up to one year, for which a subsidy from funds of the unemployment insurance or the Austrian Public Employment Service is claimed.

Suspension Agreement

In this case, the employment relationship is terminated and at the same time a re-employment commitment is agreed between the employee and the employer.

These sabbatical variants are only possible by agreement between employer and employee. There is no legal entitlement with the possibility of unilaterally enforcing a sabbatical.

5.3 Other New Manifestations

“Workation”

The “workation” – a combination of work and vacation – remains, in 2025, a new work phenomenon. This allows employees to work in other parts of the world. However, under Austrian law, there is no explicit legal basis for a workation. Therefore, the legal framework conditions must be carefully examined in each individual case and a contractual agreement on the framework conditions would be recommended.

General Protection Against Dismissal

According to a recent ruling of the Austrian Supreme Court, the general protection against dismissal for employees only applies if a domestic establishment exists. This clarification significantly restricts the scope of dismissal protection in cross-border employment situations, as employees linked exclusively to a foreign establishment cannot invoke the Austrian regime. Employers with international structures should

therefore carefully assess whether an Austrian establishment is deemed to exist when planning dismissals.

Implementation of the EU Pay Transparency Directive

Austria must transpose the EU Pay Transparency Directive (Directive (EU) 2023/970) into national law by 7 June 2026. The Directive introduces far-reaching obligations for employers, including pay transparency in job advertisements, information rights for employees regarding pay levels and comparisons, and reporting duties on the gender pay gap for companies with 100 or more employees. Employers will also be obliged to conduct joint pay assessments if gender-related pay differences of more than 5% persist. Non-compliance may result in damages claims, retroactive pay adjustments, reversal of the burden of proof in litigation, and administrative fines. Early preparation remains essential for Austrian companies.

Dual Leadership

Shared leadership or topsharing is a partnership-based leadership concept with new forms of decision-making and the further development of the job-sharing model for top positions. In this model, two managers are supposed to hold a position together, lead a team on an equal footing and take responsibility together. In practice, this will probably mostly be implemented by agreeing on part-time employment relationships.

Hot-Desking

Hot-desking is an organisational workspace system in which employees no longer have their own, permanently assigned desk, but share desks with other employees. The decision of “where” and “how” work is performed typically falls under the employer’s directive power, allowing them to set these parameters unilaterally. However, if a works council exists, it might have a say in shaping the specifics of hot-desking. Introducing this system could trigger certain co-determination rights. While Austria currently lacks extensive case law on this topic, many Austrian companies have already adopted the hot-desking approach.

6. Collective Relations

6.1 Unions

A trade union is an association representing the interests of dependent employees. The unions represent the political, economic and social interests of employees vis-à-vis employers, the state and political parties. The main tasks/rights of trade unions include:

- negotiating collective agreements;
- supra-company co-determination within the framework of the economic and social partnership; and
- providing legal advice to members.

6.2 Employee Representative Bodies

Works Council

As an organ of the workforce, the works council is called upon to safeguard and promote the economic, social, health and cultural interests of the employees. The works council is the body representing the interests of the employees at the company level.

Tasks of the works council

The works council has numerous powers. These range from concluding company agreements, through involvement in terminations, redundancies and transfers, to participation in company supervisory board meetings. The powers of the works council include:

- monitoring and control rights (eg, ensuring compliance with the collective agreement, company agreements and employee protection regulations);
- information rights (eg, on the establishment and termination of employment relationships or on ongoing management matters);
- rights of intervention (eg, to improve working conditions or in-company training); and
- consultation rights (eg, at the request of the works council, the employer must hold joint consultations on a quarterly basis and provide information on important matters).

Establishment of the works council

The works council shall be established on the basis of a works council election. At least five non-family members with voting rights (irrespective of nationality) must be permanently employed in a company for

a works council election to take place. All employees who have reached the age of 16 are entitled to vote.

It is up to the workforce, not the employer, to ensure the establishment of a works council by organising and conducting a works council election. Its term of office is five years.

If both the group of blue-collar workers and the group of white-collar workers each include at least five of these employees, separate works councils shall be established.

6.3 Collective Bargaining Agreements

A collective bargaining agreement is an agreement that the trade union usually negotiates annually with the employers' representatives for all employees in a certain sector. There are over 800 collective agreements in Austria. Every year, the trade unions negotiate over 450 collective agreements. A distinction must also be made between white-collar and blue-collar workers in collective agreements, and different collective agreements exist in this respect.

Collective agreements stipulate, among other things, minimum basic salaries and special payments (13th/14th salary) as well as regulations regarding working hours.

7. Termination

7.1 Grounds for Termination

Under Austrian labour law, a distinction is made between termination and dismissal for just cause by the employer when terminating the employment relationship.

Termination of an Employee

An employer's notice of termination is a declaration of intent by the employer addressed to the employee to terminate the employment relationship in compliance with the notice provisions (notice periods and dates). It is not necessary to state a reason for termination when giving notice. However, in certain cases (eg, care leave or part-time care leave), the employee can request a written justification for the termination from the employer within five calendar days of receiving

the notice of termination. If they fail to do so, their right to a written justification expires. The employer has five days from receipt of the request to submit the required written justification. The day of receipt of the request for reasons is not counted towards the start of the deadline.

Under certain conditions, the employee may contest the termination before the competent Labour and Social Court, for example on grounds of social hardship or an unlawful motive for termination. In this case, the employer must substantiate and prove the factual justification of the termination (eg, under-performance) in the court proceedings.

Dismissal of an Employee for Just Cause

Dismissal is the immediate (“without notice”) termination of the employment relationship by the employer for certain important reasons.

The grounds for dismissal for white-collar workers are listed by way of example in the Employees Act (*Angestelltengesetz*), and for blue-collar workers in full in the Industrial Code 1859 (*Gewerbeordnung*). There are special grounds for dismissal for employees protected by law. Each dismissal hinges on the employee’s gross misconduct, rendering their continued employment untenable for the employer.

As soon as the employer is aware of the reason for dismissal, they must issue the dismissal without delay – ie, usually on the same day.

Mass Redundancies

If a company intends to terminate a significant number of its (older) employees within one month, it must inform the Austrian Public Employment Service (AMS) in writing at least 30 days before the first termination of an employment relationship (the so-called “early warning system”). If the requirements of this early warning system are not met, the terminations issued are invalid.

If the employer intends to terminate a relevant number of employment relationships within the meaning of the early warning system, this constitutes a so-called “change in operations”. At the request of the works

council, the employer must consult with the works council on the form of the measure.

7.2 Notice Periods

The employer must observe certain notice periods and dates when terminating the employment relationship.

Issuance of the Notice of Termination

The employer’s notice of termination is not subject to any special content or form requirements. Some “laws” and collective agreements expressly provide for a written notice, in which case the notice of termination only becomes effective upon delivery.

In the following cases of practical relevance, a specific preliminary procedure must be followed before the notice of termination is issued:

- terminations in companies with an elected works council (informing the works council and waiting for a certain period of time before giving notice of termination);
- terminations that are subject to the early warning system with the obligation to notify the Austrian Public Employment Service (ie, mass redundancies);
- terminations of particularly protected persons, eg, expectant mothers, employees on parental leave, works council members (prior consent of the Labour and Social Court is required); and
- terminations of disabled persons (prior consent of the competent disability committee is required).

Employer’s notices of termination issued without observing the preliminary procedure or without the necessary consent are legally invalid.

Notice Periods

The notice period begins on the day following the day on which the notice of termination is given. The notice period is the time between the notice being given and the end of the employment relationship.

The notice periods for white-collar workers are based on the provisions of the Employees Act (*Angestelltengesetz*) unless the collective agreement provides otherwise. The notice periods for blue-collar workers are generally based on the General Civil Code

(*Allgemeines bürgerliches Gesetzbuch*) and the same regulations as above apply.

The notice period to be observed by the employer is extended according to the length of service of the employee. The employer's statutory notice periods are as follows:

- in the 1st and 2nd year of service – six weeks;
- from the 3rd year of service – two months;
- from the 6th year of service – three months;
- from the 16th year of service – four months; and
- from the 26th year of service – five months

Notice periods for both employers and employees can be extended to up to six months by agreement.

Termination Date

The termination date is the last day of the employment relationship. The statutory termination date for white-collar workers is generally the end of the respective quarter (31 March, 30 June, 30 September and 31 December of each calendar year). It may be agreed in an individual employment contract that the employer may also terminate the employment of white-collar workers on the 15th or last day of a calendar month. However, such agreements are only valid if there are no restrictive special rules under collective agreements.

Claims of the Employee Upon Termination of the Employment Relationship

If the employment relationship is terminated by the employer, a final settlement must be drawn up. This shall in any case include:

- remuneration up to the end of the employment relationship;
- pro rata special payments according to the collective agreement or employment contract until the end of the employment relationship;
- compensation for unused leave; and
- severance pay (old severance pay).

Severance Pay

The old severance pay applies to all employment relationships that began before 1 January 2003, unless a transfer to the new severance pay has been agreed.

Employees who have been with the company for an uninterrupted three years, and whose employment has not been terminated under conditions affecting severance benefits, are eligible for a specified severance amount, equivalent to several months' salaries, upon ending their employment.

Since 1 January 2003 there has been a new company pension scheme, which applies to all employees in Austria who have started an employment relationship from that date onwards. Employers contribute by setting aside 1.53% of the gross monthly salary into a personal severance pay account for each employee. To qualify for this severance pay, an employee must generally have contributions spanning three years, considering all prior contribution durations, and their employment must not have been terminated under conditions affecting severance benefits. Upon termination, the employee is either entitled to payment of the severance amount or can dispose of the saved amount in another way.

7.3 Dismissal for (Serious) Cause

The grounds for dismissal for white-collar workers are listed by way of example in the Employees Act (*Angestelltengesetz*), and for blue-collar workers in full in the Industrial Code 1859 (*Gewerbeordnung*). There are special grounds for dismissal for employees protected by law.

A blue-collar worker may, for example, be dismissed immediately if he or she:

- is found to be incapable of the agreed work;
- is guilty of theft, embezzlement or any other criminal offence which renders him or her unworthy of the employer's trust; or
- betrays a trade or business secret.

An employee may, for example, be dismissed immediately if he or she:

- is guilty of an act which renders him or her unworthy of trust;
- is incapable of performing the services promised or appropriate under the circumstances; or

- fails to perform the service for a considerable period of time without a legitimate reason for not doing so.

Each dismissal hinges on the employee's gross misconduct, rendering their continued employment untenable for the employer.

As soon as the employer is aware of the reason for dismissal, they must issue the dismissal without delay – ie, usually on the same day. The employment relationship ends on the day on which the dismissal was issued or served.

In the following cases of practical relevance, a specific preliminary procedure must be followed before the notice of termination is issued.

- Before dismissing certain persons (eg, those performing military or alternative service, expectant mothers and other protected employees or works council members or members of certain other functions), the consent of the competent Labour and Social Court must be obtained immediately after the reason for dismissal has become known.
- In companies with an elected works council, the owner of the company must immediately inform the works council of any dismissal.
- Any decision to dismiss an apprentice must be made in writing.

7.4 Termination Agreements

In the case of a mutually agreed termination, the employer and the employee agree to terminate the employment relationship at a certain point in time.

Neither specific deadlines nor dates need to be observed. Consent is voluntary for both sides.

In principle, there are no formal requirements for a dissolution by mutual consent. The dissolution by mutual consent can be made verbally or in writing. For reasons of proof, the mutual dissolution should be in writing – signed by both the employee and the employer.

There are protective regulations for certain groups of employees; for example, expectant mothers, those

performing military or alternative service, and apprentices.

7.5 Protected Categories of Employee

Employees who are subject to special protection against termination/dismissal can only be dismissed/terminated under more difficult conditions. The provisions for protection against termination/dismissal differ greatly for the individual protected groups of employees.

The following employees, among others, are under special protection:

- expectant mothers and mothers and fathers taking parental leave or part-time employment on the occasion of childbirth (parental part-time work);
- works councillors (substitute members of the works council, members of election committees and candidates under certain conditions);
- persons in positions of trust for persons with disabilities and their deputies;
- employees called up for military or alternative service; and
- disabled employees.

8. Disputes

8.1 Wrongful Dismissal

A dismissal is wrongful if there is no reason for the dismissal or the dismissal was given too late. In case of wrongful dismissal, the employee can file a complaint with the competent Labour and Social Court. This can result in the employee either receiving “termination compensation” for the period up until the employment relationship would have lawfully ended or even reinstatement to their position.

If an employee is terminated (termination in compliance with the notice periods and deadlines) by the employer, the employee may, under certain conditions, challenge the termination by bringing an action before the Labour and Social Court. The termination may be challenged if, among other things, it was motivated by inappropriate reasons or because it was socially unjustified if the employee had been employed for at least six months and the works council did not

expressly agree to the termination. A termination is socially unjustified if it affects the employee's essential interests.

If the court rules in favour of the employee in the termination proceedings, the employment relationship is restored retroactively with all rights and obligations. The employee is entitled to retroactive remuneration since the termination of the employment relationship.

8.2 Anti-Discrimination

Discrimination in the context of labour law occurs when employees are directly or indirectly discriminated against on the grounds of ethnicity, gender, religion or belief, age or sexual orientation.

Discrimination Claims

Establishment of the employment relationship

If prospective employers flout the principle of equality, leading to an applicant not being hired due to discrimination, the applicant can claim compensation.

Determination of remuneration

If an employee receives less pay than another employee for the same or equivalent work on the basis of a protected characteristic, he or she is entitled to payment of the difference and compensation for the personal injury suffered (non-material damages).

Voluntary social benefits that do not constitute remuneration

Employees are entitled to receive the corresponding social benefit – ie, an additional benefit from the employer connected with the employment relationship (or compensation for pecuniary loss) as well as non-material damages.

In-company education and training

Employees can sue for access to an in-company training measure which they were denied, for example on the grounds of gender, or have a claim for compensation for pecuniary loss and non-material damages.

Career advancement, especially promotions

If a company violates the principle of equal treatment and employees are unable to advance professionally as a result, they are entitled to compensation for

pecuniary loss. There is also a claim for non-material damages.

Other working conditions

An employee may not be discriminated against in the provision of working conditions. The discriminated employee is entitled to the same working conditions or to compensation for financial loss. There is also a claim for non-material damages.

Sexual harassment

Employees have a right to compensation from the harasser, regardless of whether it is the employer, a colleague or a customer. In addition, there is a claim for damages against the company if it has not taken reasonable steps to remedy the harassment. In any case, the employee is entitled to reasonable compensation (at least EUR1,000) for the violation of his or her personal dignity.

8.3 Digitalisation

The proceedings before the Labour and Social Court have some special features compared to the proceedings in “general” civil law cases, which are regulated in a separate law.

In response to the COVID-19 pandemic, provisions were temporarily introduced allowing civil case hearings, including evidence sessions, to be conducted via video without necessitating in-person attendance. While this regulation underwent multiple extensions, it eventually expired on 30 June 2023. A new amendment to the Civil Procedure Act (*Zivilprozessordnung*) has now enshrined the use of video conference during hearings in the law, albeit only in limited cases. Legislative guidelines suggest that video hearings should be an exception; notably, with regard to the taking of evidence by video, the existing possibilities are only cautiously expanded.

What effect this change in the law will have on labour court proceedings remains to be seen.

9. Dispute Resolution

9.1 Litigation

In Austria, the regional courts have jurisdiction in the first instance for legal disputes concerning claims under labour contracts or company constitution law. In Vienna, the Labour and Social Court of Vienna has jurisdiction.

The special feature of the composition of the court in labour and social court proceedings is that expert lay judges decide together with professional judges in all instances. The expert lay judges come from both the employers' and the employees' side. They are nominated by the statutory professional or interest groups for five years. Lay judges from the employers' and employees' sides are always equally represented in the proceedings.

In the first instance, there is no obligation to represent or advocate. If persons are unrepresented, the judge has a special duty to give instructions. A special feature of labour law proceedings is that officials and employees may also be represented by the interest groups in court in the first and second instance. As such, the employer may be represented by the Chamber of Commerce, and the employee by the Chamber of Labour.

There is no "class action" under Austrian labour law. However, under labour law it is possible for the works council (or the employer) to sue for a declaratory judgment on the existence or non-existence of rights or legal relationships affecting at least three employees of the establishment or enterprise. Such declaratory proceedings may, for example, concern questions of classification or claims to allowances. If a judgment is passed on the action for a declaratory judgment, it is only valid between the parties to the proceedings – ie, between the works council and the employer.

9.2 Alternative Dispute Resolution

Agreements specifying a place of jurisdiction for future labour law disputes are only possible to a very limited extent. Only disputes that have already arisen can be brought before an arbitration court. Certain exceptions also exist for managing directors and members of the executive board of a corporation for future individual employment law disputes.

9.3 Costs

As a general rule, the losing party of a court case has to bear not only his/her own costs but also the costs of the other side. There are some exceptions to the general rule in labour law. Specifically, in disputes arising out of the works constitution, for the first two instances and in special declaratory proceedings, one's own costs must always be borne, regardless of the outcome of the case (eg, in proceedings to challenge a termination). It is only when the case reaches the Supreme Court that costs can be reimbursed.

AZERBAIJAN



Law and Practice

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Caspian Legal Center (CLC) is one of the few premier Baku-based consulting firms combining legal and tax & accounting practices. Both departments of CLC have earned international recognition from Chambers and Partners and have received ITR's Tax Firm of the Year and Transfer Pricing Firm of the Year awards in the CIS region. CLC primarily supports multinational

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1. Employment Terms

1.1 Employee Status

Azerbaijani labour law is very protective of the employee and applies to all employees. Thus, in Azerbaijan, there is no legal distinction between blue- and white-collar workers. However, one semi-distinction shall be mentioned regarding the minimum 21 days' annual paid leave rule: white-collar workers, which are understood to refer to employees who are usually involved in managerial or professional (specialist) work, are granted minimum 30 days' annual paid leave.

Employees can be classified based on the nature and duration of the work performed as follows:

- fixed-term employees – hired for a specific period, with employment ending on a predetermined date;
- indefinite-term employees – hired for an indefinite period;
- part-time employees – employed on partial working day or partial working week by mutual agreement between the employee and the employer;
- full-time employees – perform their labour functions with weekly and daily working hours provided by the legislation;
- piece-rate employees – paid based on the amount of work performed;
- time-based employees – paid for specified labour relations within a specified time frame;
- probationary employees – employed on a trial basis for the purpose of determining their qualification for regular employment; and
- seasonal employees – work or perform services which are seasonal in nature, and the employment is for the duration of the season.

1.2 Employment Contracts

Fixed-Term Employment Contract

A fixed-term employment contract is defined as a contract that is concluded for a specific period of time. If this type of contract continues uninterrupted for more than five years, it is automatically deemed an indefinite employment contract.

The Labour Code establishes circumstances where fixed-term contracts may be concluded, such as for seasonal work and short-term work assignments, with

the inclusion of “by mutual consent of the parties” indicating that these circumstances are not exhaustively limited. The Code also mandates fixed-term contracts in certain situations, particularly for positions involving high occupational health risks where the employer must inform the employee of the probable duration of potential occupational illness exposure.

Fixed-term employment contracts terminate automatically upon expiration of their stated term; however, if neither party provides written notice (whether on paper or through an electronic information system) of contract termination at least one week prior to the expiration date, the contract shall be automatically extended for the period originally specified in that contract.

Indefinite Term Employment Contract

Regarding indefinite term employment contracts, while the legislation does not provide extensive special regulation, it clearly establishes that if an employment contract does not specify the period for which it is concluded, it shall be considered concluded for an indefinite period. Importantly, an employment contract concluded without a specified term cannot be unilaterally replaced with a fixed-term employment contract without the mutual consent of both parties.

Employment Contracts With a Probation Period

Both indefinite and fixed-term employment contracts may include a probation period to assess the employee's professional level and ability to perform the required labour function. For employment contracts concluded for up to six months, a probationary period of no more than two weeks shall be established. For all other employment contracts, a probationary period of no more than three months may be applied. The probationary period consists only of actual working hours during which the employee performs their labour function. Periods when the employee temporarily loses work capability or is absent from work while maintaining average salary are excluded from the probationary period calculation. Certain categories of employees are exempt from probation periods, including persons under 18 years of age and those who obtained their position through competitive selection processes.

Formal Requirements

According to recent legislative amendments, employment contracts shall generally be concluded in electronic document format. However, there is a specific exception for certain state body positions. Employment contracts regarding employees recruited to designated positions in state bodies must be concluded in written form on paper.

The legislation provides a model form of employment contract that may be utilised by mutual agreement of the parties, which is signed via e-signature tools by both parties. For employment relationships requiring written paper contracts in state bodies, the contract must be prepared in at least two copies. These contracts must be certified by the signatures and seals of both parties. One copy is retained by the employee and the other by the employer.

Mandatory Terms

The Labour Code requires employment contracts to include the following information:

- employee's surname, first name, patronymic name, address, and personal identification number (PIN);
- when the employer is a state body (institution), legal entity or branch/representative office of a foreign legal entity – the name, position, surname, first name and patronymic name of the official exercising employer functions, taxpayer identification number (TIN), actual business address; when the employer is a natural person – surname, first name and patronymic name, TIN, actual business address, and PIN;
- address of the employee's workplace, position (profession), with notation indicating whether it is a primary or additional workplace;
- date of conclusion of the employment contract and the date the employee must commence work;
- duration of the employment contract;
- employee's labour function;
- employee's working conditions – working time and rest periods, wages and supplements, duration of annual leave, occupational safety, mandatory state social insurance and other compulsory insurance coverage;
- mutual obligations of the parties under the employment contract;

- creation of conditions for the employee to engage in physical education and sports, including rehabilitation and professional-applied training during work hours and after work, as well as sports and health tourism;
- social insurance number (SSN) of the employee, except for employees whose contracts are concluded electronically, those recruited to designated state body positions approved by the relevant executive authority when starting work for the first time, and persons whose information is subject to confidentiality under the Law "On State Secrets"; and
- information regarding additional terms determined by the parties.

1.3 Working Hours

Working Time Limits

The regular working week in Azerbaijan is up to 40 hours, typically spread across eight hours per day over five days. The duration of the working time cannot be extended beyond this limit, except in specific cases outlined in the Labour Code. Under a six-day schedule, daily hours are capped at seven hours (40-hour week), six hours (36-hour week), or four hours (24-hour week). For each hour of work performed at night, the employee is paid an additional fee of 20% of their hourly rate (position) salary.

Reduced Working Time

Certain employee categories are entitled to reduced working hours based on age, health status, working conditions and job requirements. Weekly limits are:

- 24 hours maximum for employees under the age of 16; and
- 36 hours maximum for employees aged 16–18, those with 61–100% impairment of bodily functions, pregnant women, mothers with children under 18 months, and single parents of children under three years of age.

Employees in harmful working conditions are limited to work 36 hours weekly. Specific arrangements are established through collective agreements, if not concluded, employer–trade union consultations based on approved hazardous occupation lists. Similar 36-hour limits apply to high-stress positions involving mental

strain, physical demands or health risks. When at least half of the daily working hours of these two types of employees fall at night, the part of the working hours falling at night shall be shortened by one hour.

The wages of employees working under reduced working hours is paid in full amounts determined for normal working hours.

Part-Time Work

Part-time work can be agreed upon by employer and employee either when signing the contract or during employment. On a mandatory basis, employers must grant part-time work when requested by pregnant women, employees with health conditions requiring reduced hours (per medical opinion), women with children under the age of 14 or disabled children, and those caring for chronically ill family members.

Part-time employees receive wages proportional to hours worked or output achieved. They maintain all standard employment rights and receive full annual leave entitlements. Working hours for mandatory cases are determined through employer–employee agreement, with pay calculated proportionally to time worked.

Shifts

Working in shifts – in two, three or four shifts – is introduced in cases when the duration of the production process exceeds the permissible length of working day, as well as for the purposes of more efficient use of equipment, or increase of the volume of produced output or rendered services. With the shift work arrangement, each of the groups of employees must undertake the work for a specified length of the working time according to the shift schedule. In this case, the employees' work is established according to shift schedules, and working hours are usually distributed evenly over the weeks.

Partitioning a Working Day

In work where it appears necessary because of the specific nature of the work, as well as in work with varied intensity during the working day (shift), the working day may be split into parts so that the total length of working time does not exceed the fixed length of

the permitted working day. Such partitioning shall be arranged by the employer.

Overtime

Overtime work requires both employer directive and employee consent, involving work beyond established daily hours. Employees in particularly hazardous sectors and other specified categories are exempt from overtime requirements. Overtime is authorised for emergency situations including natural disasters, industrial accidents, military situations, and preventing perishable goods loss, and other stipulated circumstances.

The general limit is four hours over two consecutive working days. In hazardous working conditions, limits are reduced to two hours per shift and two hours over two consecutive days. Time-based employees receive minimum double hourly rates. Piece-rate employees receive full piece-rate wages plus additional payment equivalent to qualified time-based hourly rates.

Employees under the age of 18 are prohibited from overtime work. Pregnant women and mothers with children under the age of 14 or disabled children may only work overtime with written consent.

1.4 Compensation

Minimum Wage

The Labour Code provides that employees have the right to a minimum wage. According to the Presidential Decree dated 23 December 2024, the minimum monthly wage was set at AZN 400 from 1 January 2025.

No government intervention takes place with respect to determining the procedure for and amount of compensation, pay increases, etc, apart from the minimum wage stipulation.

Reward

The 13th-month pay, commonly known as a “13th-month bonus”, constitutes an additional annual remuneration provided to employees, generally amounting to one month's salary. This compensation is typically awarded at the conclusion of the calendar year or during the holiday season as an additional benefit.

While the legislation does not define a specific bonus such as the 13th-month bonus or performance bonus in a specified rate, it is understood that rewards that can be granted by the decision of the employers to employees who have distinguished themselves in performing their labour functions at a high level of professionalism and in compliance with internal disciplinary rules of the enterprise. Such rewards consist of money or valuables as a gift, additional leave, individual addition to the salary, higher personal insurance, the payment of the cost of sanatorium-resort treatment, and tourist trips.

Severance Pay

When an employment contract is terminated, the employee is paid a severance pay calculated by the employer based on various criteria depending on the grounds for termination.

Supplement

The legislation establishes additional wages for work performed on rest days, voting days, holidays that are not considered working days, and national mourning days, as well as for work performed overtime. For multi-shift work schedules, additional compensation is established at 20% of the employee's hourly tariff (position) salary for each hour worked during the evening shift, and 40% for each hour worked during the night shift.

1.5 Other Employment Terms

According to the Labour Code, there are four types of leave: vacation; social leave; educational and creative leave for continuing education and pursuing scientific research; and unpaid leave.

Vacation

Vacation consists of annual base vacation for employees and additional base vacation granted depending on the nature of production, working conditions, length of service, and family circumstances. Vacation may be taken either together or separately. Base vacation cannot be less than 20 calendar days and equals 30 calendar days for certain categories of employees, including agricultural workers, medical doctors and pharmacists.

Additional base vacation is granted on the basis of various criteria.

- Working conditions and labour function characteristics – Employees engaged in underground work or in hazardous or arduous occupations and those whose occupations involve increased sensitivity, excitement, or mental and physical stress shall be granted an additional base vacation no less than six calendar days.
- Length of service – Employees shall be eligible for the following amounts of additional vacation time:
 - (a) seniority of five to ten years – two additional calendar days;
 - (b) seniority of ten to fifteen years – four additional calendar days; and
 - (c) seniority of over fifteen years – six additional calendar days.
- Women with children – Regardless of the amount of base and additional vacation time, working women with two children under the age of 14 shall be eligible for two additional calendar days of vacation time; while women with three or more children of this age or with a child with restricted health condition shall be eligible for five additional calendar days of vacation time. Fathers raising their children as single parents and adoptive parents will enjoy the same rights.
- Specialists working in the liberated territories of the Republic of Azerbaijan – These employees shall be granted additional leave for a period of five calendar days.

The regulation of overall vacation periods is sophisticated, as different professions have varying minimum calendar day requirements established according to occupational categories.

- Due to engagement in pedagogical and scientific activities, employees shall be granted either 42 or 56 calendar days depending on their specific division within these professional activities.
- Due to physiological characteristics, employees under the age of 16 shall be granted leave of no less than 42 calendar days, and employees from 16 to 18 years of age shall be granted leave of no less than 35 calendar days. Employees under the age of 18 with working disabilities, including those

with limited health, regardless of the percentage, cause and duration of the impairment of body functions, shall be granted leave of no less than 42 calendar days.

- Due to special services before the people of Azerbaijan, employees who received injuries (injury, trauma, concussion) for the freedom, sovereignty and territorial integrity of the Republic of Azerbaijan, as well as state awards related to the defence of the sovereignty and territorial integrity of the Republic of Azerbaijan, shall be granted leave of no less than 46 calendar days.
- Due to the performance in theatre and other similar enterprises, artistic and artist staff of theatre and performance enterprises, television, radio and cinematographic institutions are granted labour leave for a period of 42 calendar days, and employees directly serving the stage are granted 35 calendar days.

Educational and Creative Leave

Educational and creative leave under the Labour Code provides paid leave for employees pursuing academic and scientific activities while maintaining employment. Creative leave includes up to two months for PhD dissertation completion, three months for DSc work, annual 30-day leave for doctoral students who also work, and up to three months for writing educational materials. Educational leave grants time off for students attending sessions, examinations, and thesis work, with durations ranging from 20 to 40 days for regular academic activities to four months for thesis preparation, depending on education level. Compensation during creative leave is based on regular salary, while educational leave uses average salary calculations.

Social Leave

Maternity and childcare leave under the Labour Code provides comprehensive support for working women and families. Standard maternity leave grants 126 calendar days of paid leave (70 days before birth, 56 days after), extended to 70 days post-birth for complicated deliveries or multiple births. Agricultural workers receive enhanced benefits with 140 days for normal births, 156 days for complicated deliveries, and 180 days for multiple births. Women who adopt children under two months old are entitled to the same 56-day

post-birth social leave and additional benefits. Parents or family members caring for children may take partially paid social leave until the child reaches three years of age, with compensation determined by legislation.

Unpaid Leave

Unpaid leave under the Labour Code allows employees time off without pay for family, educational or personal reasons. It includes leave upon employee request for specific circumstances with set durations in a work year (ranging from seven days to one month, or until the person reaches certain age (caring for chronically sick children until they become four years old) depending on the situation, such as fathers during wives' maternity leave, parents with young children, employees with disabilities, or doctoral students). Leave by mutual agreement between employer and employee cannot exceed six months.

Confidentiality and Non-Disparagement

An employee shall be held financially liable in full if they disclose the employer's commercial secret; if they cause moral damage by discrediting the employer's identity, degrading their honour and dignity, or by spreading untrue, slanderous, insulting slander or false information, seriously harming their entrepreneurial activity. This can be specifically regulated through a separate contract between the employer and the employee.

Employee's Liability

Except for stipulated situations in the Labour Code, the employee is financially liable for the damage caused to the employer up to the amount of one month's average salary. Whether directly when concluding an employment contract or in the process of employment relations, the employer may conclude a written agreement with employees who have reached the age of 18 who perform work or provide services directly related to the storage, processing, sale, transportation, use, and other operations of the property entrusted to them, stating that they bear full financial responsibility.

An employee shall not be liable for any damage caused to the employer by a natural disaster while performing their job duties. In addition to the actual

damage caused by the employee's action or inaction, the employee shall not be liable for any loss of income or profit that the employer may have received in the future.

2. Restrictive Covenants

2.1 Non-Competes

Under Azerbaijani law, legislative references to non-competition are limited to provision within the sample employment contract contained in the Labour Code. This provision permits employees to undertake substitute work outside regular working hours or, subject to employer consent, during working hours at additional workplaces, provided such employment does not compete with the primary employer's business interests.

Notwithstanding the limited statutory framework, employers routinely incorporate non-competition clauses into employment contracts or conclude separate non-competition agreements with their employees. The rationale is to safeguard business interests by restricting employees from participating in competitive activities both during the employment relationship and also following its termination. The clauses usually encompass:

- temporal limitations on the duration of restrictions;
- prohibited industries or business activities in which the employee may not engage; and
- restricted classes of persons including customers, clients or employees with whom the former employee is precluded from conducting business.

The moment an employer believes an employee has contravened relevant non-competition provisions, standard practice involves issuing a formal demand requiring immediate cessation of the violations and payment of compensation to the employer. Failure to comply with such demands may result in termination of the employment contract by the employer.

2.2 Non-Solicits

Similar to non-compete agreements, non-solicitation provisions prohibit former employees from contacting current clients, customers and suppliers. They serve

to hinder employees from recruiting or attempting to recruit employees, service providers or management/supervisory personnel from the employer. It is typical for employers to conclude an agreement that includes both non-compete and non-solicitation clauses because of their shared characteristics.

From the legal interests perspective of employees, such non-solicit agreements or clauses may be considered as restrictive regarding right to employment, therefore leading to questions concerning their legal validity.

3. Data Privacy

3.1 Data Privacy Law and Employment

After the conclusion of an employment contract, the transfer of information about an employee's labour activity to other persons is regulated by the laws of the Republic of Azerbaijan "On Personal Data", and "On Access to Information", with the exception of the transfer of general information on labour activity to the employer.

Accordingly, personal data transfer to third parties requires written consent from the data subject – in the employment context, the employee. This consent can be provided through written form or via the Electronic Government Information System. The exception covers exceptional cases like the employee's death and similar situations. Employees can also withdraw their consent in the same way. Once withdrawal is communicated, the effect is immediate, requiring the employer and third parties to cease data transfers immediately. This creates an ongoing obligation for all parties to monitor consent status and respond promptly to withdrawal requests.

The legislation provides three specific categories where data transfers can occur without explicit consent.

- Open category personal data – This category includes information about the employee that has been anonymised in accordance with the established procedure, declared open by the employee, or entered into an information system created for

general use with their consent. The name, surname and patronymic of an employee are considered open personal data. Confidentiality of such data is not required.

- Confidential personal data transfers to state bodies or local self-government authorities – This occurs when the transfer relates to the authorities' assigned functions and duties. This framework requires that information systems handling such data comply with legislative requirements, ensuring appropriate security.
- Emergency situations – This comprises cases in which data transfer is necessary to protect life and health, but only when obtaining consent cannot be delayed. This humanitarian exception recognises that urgent medical or safety situations may not permit the normal consent process.

International transfers of tax and financial information under treaty-based arrangements cover financial operations data of foreign legal and natural persons operating in Azerbaijan, based on international agreements ratified by Azerbaijan. Such information can be transferred either directly or through competent executive authorities.

4. Foreign Workers

4.1 Limitations on Foreign Workers

The regulatory framework for foreign employees in Azerbaijan can be divided into two groups.

Foreigners Requiring Work Permits

Generally, every able-bodied foreigner who has reached the age of 18 can work in Azerbaijan after obtaining a work permit. A work permit is an official document that allows foreigners to engage in paid labour activity in Azerbaijan. The issuance of this is carried out within the framework of the labour migration quota approved by the Cabinet of Ministers of the Republic of Azerbaijan. The labour migration quota is the maximum number of foreigners who are allowed to engage in paid labour activity in the territory of Azerbaijan during a calendar year.

The legislation establishes seven specific circumstances under which work permit applications must be denied:

- if the necessary documents are not submitted;
- if the submitted documents are forged, contain inaccurate or distorted information;
- if the employer's demand for labour can be met from local labour resources;
- if the foreigner to be employed is not 18 years old;
- if the labour migration quota is full;
- if the foreigner is a carrier of infectious diseases; and
- when a foreigner does not have the qualifications or work experience required to perform the work to which they are assigned.

Foreigners Exempt From Work Permit Requirements

Legislation provides an extensive list of persons in this regard, including those who have a permanent residence permit in Azerbaijan; those engaged in entrepreneurial activity in Azerbaijan; and those working in diplomatic missions and consulates, in international organisations, etc.

The Cabinet of Ministers retains the authority to implement targeted restrictions on foreign labour migration in specific sectors or industries, taking into account the needs of the domestic labour market.

Overall, foreigners enjoy all labour rights on an equal basis with citizens of Azerbaijan and shall bear the duties corresponding to these rights. With the exception of cases stipulated by law, it is prohibited to restrict the labour rights of foreigners or to establish more favourable rights for them.

4.2 Registration Requirements for Foreign Workers

Legal entities, individuals engaged in entrepreneurial activities without forming a legal entity, and branches and representative offices of foreign legal entities obtain work permits for foreigners. Applications received for a work permit are considered within the period specified in the Law "On State Duty" in accordance with the amount of state duty paid.

To obtain a work permit, the employer must submit the following documents:

- application form;
- a copy of the passport or other border-crossing document of the foreigner;
- a notarised copy of the document confirming that the foreigner has the qualifications required to perform the intended work;
- a certificate justifying the necessity of involving the foreigner for the intended workplace;
- relating to the employer:
 - (a) in the case of a legal entity – notarised copies of the charter of the legal entity and the certificate of state registration; or
 - (b) in the case of an individual – notarised copies of the document confirming the identity of the individual and the certificate of taxpayer registration issued to the individual; and
- a certificate stating that the foreigner is not a carrier of a disease/virus.

A work permit is issued for a period of one year, and if it is intended to conclude an employment contract for a period of less than one year, then for the same period. The term of the work permit may be extended for no more than one year each time. The exception is in relation to those involved in labour activities in the liberated territories of Azerbaijan: the term of the work permit may be extended for no more than two years each time. In order to extend the term of the work permit, the employer must apply to the State Migration Service with an application at least 30 days before the expiration of the work permit. If the employer fails to pay the state fee for obtaining a work permit within 30 days, as well as if foreigners are refused permission to temporarily reside in Azerbaijan, the State Migration Service cancels the work permit.

5. New Work

5.1 Mobile Work

Telework or mobile work is not regulated in Azerbaijan. However, there is ongoing work over the regulation of these regimes.

The initial initiative in the field of including the concept of remote work in the legislation is the Action Plan provided for in the “State Program for the Implementation of the National Strategy for the Development of the Information Society in the Republic of Azerbaijan for 2016–2020”. According to that programme, the Ministry of Labor and Social Protection of the Population and the Ministry of Transport, Communications and High Technologies were entrusted with studying world experience in remote work and preparing proposals on its application mechanisms. In a news release dated 2019, it was noted that the concepts of “Remote work – a form of performing labor functions at home using electronic, software and technical means” and “Telework – a form of performing labor functions at home using telecommunications means” would be included in the Labour Code.

The following year, during the expansive spread of the COVID-19 pandemic, in accordance with the decisions adopted by the Cabinet of Ministers, employers were obliged to ensure that employees who were not involved in work worked at home, as well as in the form of remote work or telework, whenever possible. At the beginning of 2022, the Ministry stated the need to adapt the legislation in this area to the requirements of the modern labour market. They also noted that they were working on a draft law on amendments to the Labour Code in this regard and that other articles of the Labour Code would be amended in accordance with the new concepts to be included.

Even though there is still no concrete legal norm regarding these issues, companies grant and organise such work regimes in a manner that they consider appropriate. In practice, they will incorporate provisions concerning mobile work into their employment contracts through mutual agreement with an employee.

5.2 Sabbaticals

The requirements for unpaid leaves are the most similar notion. As mentioned in **1.5 Other Employment Terms**, an employee has the right to use unpaid leave in cases where it is necessary to leave work due to the fulfilment of family, household and other social issues, to study, to engage in creative scientific work, as well as due to age or physiological conditions.

Unpaid leave is granted at the request of employees or by mutual agreement of the parties. The maximum period of unpaid leave may not exceed six months.

At the employee's request, unpaid leave shall be granted within a working year in the following cases and for the specified durations (selected situations):

- to one of the parents of a child diagnosed with a chronic illness (based on the opinion of a medical advisory commission), or to another family member directly responsible for the child's care – until the child reaches the age of four;
- to male employees whose wives are on maternity leave – for up to 14 calendar days;
- to employees who sustained injuries (wounds, trauma or concussion) in the course of defending the territorial integrity and sovereignty of the Republic of Azerbaijan – for up to 14 calendar days;
- to parents raising a child living with the human immunodeficiency virus (HIV), as well as to parents of a child with a disability – for up to 14 calendar days; and
- to employees enrolled in doctoral (or adjunct) studies – for up to one calendar month.

5.3 Other New Manifestations

There are some new developments in the employment sector in Azerbaijan, including the following.

Desk Sharing

Desk sharing has gained traction as companies seek to reduce office rental costs. In Azerbaijan, this practice lacks specific legal regulation and is typically absent from individual employment contracts. Instead, employers implement it as an organisational strategy.

Platform Workers

In recent years, job losses due to the Covid-19 pandemic and the entry of white-collar workers into freelance work have supported the growth of the gig economy. As a result, employees and employers have begun to prefer freelancing over office work, and many daily services have been accessed across platforms. The platform economy creates new business opportunities. However, the emergence of platform work reveals a number of its shortcomings, including frequent violations of the rights of platform work-

ers, and their deprivation of labour rights regulated by labour legislation.

In order to prevent these violations, a number of legal and administrative measures have been envisaged within the framework of the Action Plan for the Prevention of Informal Employment in the Republic of Azerbaijan approved in 2017. In accordance with the Employment Strategy of the Republic of Azerbaijan for 2019–2030, the implementation of complex measures aimed at the prevention of informal employment has been set as a priority. Based on the 2020 Rules for Conducting and Coordinating Control Measures in the Field of Legalization of Informal Employment, monitoring will be carried out in accordance with the directions of action through the unified electronic information resource “Control over Informal Employment”, and responsibility measures will be taken in connection with the detected facts of informal employment. In this context, the List of information systems and resources that require integration into the relevant information resource has already been approved.

6. Collective Relations

6.1 Unions

Trade unions may be established on a purely voluntary basis, without any discrimination among employees, without prior permission from the employer. Employees may join relevant trade unions and engage in trade union activities to protect their labour, social and economic rights and legitimate interests.

Status of Trade Unions

According to the legislation, a trade union can be divided as follows:

- local status – a trade union association that unites the primary organisations of trade unions of enterprises operating in one administrative territorial unit on a sectoral basis;
- territorial status – a trade union association that unites local trade unions operating in one administrative territorial unit;
- republican status – a trade union association that unites primary, local and territorial trade unions operating in sectors and separate sectors; and

- general republican status – a trade union association established by more than half of trade unions with republican status.

Role of Trade Unions

Roles can be classified on the basis of basic rights conferred upon trade unions.

- Participation in the creation of norms – Draft laws on labour, social and economic rights of employees are considered by discussing the opinion of trade unions. They may appeal legislative acts, decisions, and orders of state bodies that violate the interests of employees and their rights.
- Protection of labour rights – The release of employees in connection with the rationalisation of production is carried out by conducting negotiations with them on the protection of the rights and interests of employees.
- Monitoring compliance – They have the right to demand compliance by the employer with the legislation on labour and trade unions, as well as on social and economic issues, and the elimination of revealed violations.
- Labour protection – They participate in the implementation of control over the compliance by the employer with the legislation regulating the labour protection of employees at workplaces, compensation for damage due to industrial injuries, working conditions, and industrial sanitation standards.
- Conclusion of collective agreements and contracts – Collective negotiations and the conclusion of collective agreements are carried out based on the proposal of trade unions.
- Control over the standard of living of employees – Trade unions participate in the determination of amounts of compensation depending on the main criteria for the standard of living, in monitoring observance of the subsistence minimum, and in the timely increase in wage amounts depending on price increases.
- Consideration of labour disputes, holding off mass events – Trade unions resolve individual labour disputes between their members and employers within the scope of their powers. Additionally, in order to implement the goals and objectives of the charter, trade unions may organise and hold strikes, rallies and other mass events.

6.2 Employee Representative Bodies

The representative bodies of employees are trade union organisations that operate on the basis of the charter and relevant legislation, voluntarily formed by employees to protect their labour, social and economic rights and legitimate interests. The fact that this body is a trade union organisation indicates that the roles envisaged in 6.1 Unions apply here as well.

6.3 Collective Bargaining Agreements

A collective agreement is an agreement concluded in writing between an employer, labour collective or trade union organisation that regulates labour, socio-economic, domestic and other relations. The agreement applies to all employees of the enterprise, including persons hired after the collective agreement enters into force.

The Labour Code provides an extensive list of issues that are considered in the agreement, including:

- increasing the efficiency of the enterprise's production;
- determining the rules and amounts of payments; and
- the mechanism for taking into account price increases and the level of inflation.

A collective agreement may be concluded for a period of one to three years. Except for cases of change of ownership of the enterprise or liquidation of the enterprise, organisational and structural changes in the enterprise, termination of the employment contract with the employer, as well as termination of the activities of the trade union organisation, do not lead to the loss of legal force of the agreement.

In the event of a change of ownership of the enterprise, the collective agreement shall remain in force for a period of three months. During this period, the parties shall commence negotiations with a view to concluding a new collective agreement or maintaining the previous one in force, and making additions and amendments to it.

7. Termination

7.1 Grounds for Termination

An employment contract may be terminated only on the grounds and in the manner specified in the Labour Code. These grounds are as follows:

- initiative of one of the parties;
- expiration of the employment contract;
- change in the terms of employment;
- in connection with a change in the owner of the enterprise;
- circumstances beyond the control of the parties; and
- circumstances specified by the parties in the employment contract.

The legislation elaborates each of them, establishing various procedures. To prohibit the abuse of power, the Code specifies the grounds regarding termination on the basis of the employer's initiative:

- when the enterprise is liquidated;
- when the number of employees or staff is reduced;
- when the competent authority makes a relevant decision that the employee is not suitable for the position they hold due to insufficient level of professionalism, qualification (profession);
- when the employee fails to fulfil their labour function or obligations under the employment contract, or grossly violates their labour duties;
- when the employee fails to prove their ability during the probationary period; and
- when an employee of an enterprise financed from the state budget reaches the working age.

The employer must justify the necessity of terminating the employment contract.

Redundancy

Priority of some employees in the case of redundancy

When reducing the number of employees or reducing staff, employees with a higher qualification (profession) and level of professionalism required for the performance of labour functions for certain positions are retained. The employer determines the level of professionalism of the employee, by taking into account the

improvement of their professional training, acquisition of a new specialty and improvement of their qualification.

The employer gives priority to retaining the following persons in the case of the same qualifications (professions) or level of professionalism:

- members of the family of a martyr;
- participants in the war;
- wives (husbands) of soldiers and officers;
- those who have two or more children under the age of 16 in their care;
- persons who have become disabled as a result of an industrial accident or occupational disease at the same enterprise;
- persons who are considered to be internally displaced persons and persons with refugee status; and
- other persons provided for in collective agreements or employment contracts.

The law requires employers making redundancies to support certain groups. If an employee is an orphan or deprived of parental care and is laid off due to redundancy, the employer must cover the cost of necessary professional training to help them find a new job at the same or another enterprise.

The rest of the procedures relating to redundancy are set out in **7.2 Notice Periods**.

7.2 Notice Periods

Notice Period and Severance

In the event of a reduction in the number of employees or a reduction in their staff, before the employer terminates the employment contract, the employee must be officially notified by the employer within the following periods, depending on the length of service:

- for up to one year of service – at least two calendar weeks;
- for one to five years of service – at least four calendar weeks;
- for five to ten years of service – at least six calendar weeks; and
- for more than ten years of service – at least nine calendar weeks.

However, following these notice periods is not compulsory because the employer may terminate the contract in the event of a reduction in the number of employees or a reduction in their staff, with the consent of the employee, by paying:

- 0.5 times the average monthly wage instead of the notice period of at least two calendar weeks;
- 0.9 times the average monthly wage instead of the notice period of at least four calendar weeks;
- 1.4 times the average monthly wage instead of the notice period of at least six calendar weeks; and
- 2.0 times the average monthly wage instead of the notice period of at least nine calendar weeks.

In the case of redundancy, the employment contract of an employee who is a member of a trade union shall be terminated with the prior consent of the trade union operating at the enterprise.

When a contract is terminated due to the liquidation of an enterprise and a reduction in the number of employees or staff, the employee is paid a severance pay in the following amounts, depending on the length of service:

- for up to one year of service – in the amount of the average monthly wage;
- for one to five years of service – in the amount of at least 1.4 times the average monthly wage;
- for five to ten years of service – in the amount of at least 1.7 times the average monthly wage; and
- for more than ten years of service – in the amount of at least 2.0 times the average monthly wage.

In the event of termination of the employment contract in the case of change of labour conditions and when the employee is called up for military or alternative service, when the employee is unable to perform their job function due to complete loss of working capacity for a continuous period of more than six months, the employer shall pay the employee a benefit in the amount of at least twice the average monthly wage. In the event of termination of the employment contract in connection with the death of the employee, the heirs of the deceased shall be paid a benefit in the amount of at least three times the average monthly wage. In the event of termination of the employment

contract in connection with a change in the owner of the enterprise, the employer shall pay the employee a benefit in the amount of at least three times the average monthly wage.

7.3 Dismissal for (Serious) Cause

Failure of the employee to fulfil their labour function or obligations under the employment contract, or gross violation of labour duties, serves as one of the grounds for termination of the contract. The Labour Code reflects the situations that fall under “gross violation” as:

- failure to appear at work for the entire working day without any valid reason, except for their own illness, or the illness or death of a close relative;
- coming to work in a state of intoxication after consuming alcoholic beverages, narcotic drugs and psychotropic, toxic and other poisonous substances, as well as being in a state of intoxication after consuming these beverages or substances at the workplace after coming to work;
- causing material damage to the owner as a result of the employee's guilty actions (inaction);
- causing injury to the health of colleagues or their death as a result of the employee's guilty actions (inaction);
- intentionally disclosing a production, commercial or state secret or failing to fulfil their obligation to keep this secret confidential;
- serious harm to the legitimate interests of the employer, enterprise or owner as a result of gross errors and violations of law committed during labour activity;
- repeatedly violating labour functions within six months without drawing any conclusions from the disciplinary punishment previously imposed by the employer for violating labour functions; and
- committing administrative offences or socially dangerous acts constituting a crime directly at the workplace during working hours.

Termination of an employment contract on these grounds is permitted provided that the employee intentionally or negligently or carelessly fails to perform their labour function or duty (obligations), resulting in a disruption of the normal harmony of work, production, labour and performance discipline at the

relevant workplace, or in any way causing damage to the rights and legally protected interests of the owner, employer, as well as the labour collective (its individual members).

An employee who is a member of a trade union may only be dismissed for serious cause with the prior consent of the trade union operating at the enterprise. To initiate this process, the employer must submit a written, justified request to the trade union. The trade union organisation is then required to provide a written, reasoned decision within ten days of receiving the employer's request.

7.4 Termination Agreements

In order to ensure more complete regulation of labour relations in the future, the legislation enshrines that the parties must include in the employment contract the circumstances that correspond to the employee's working conditions. The following additional circumstances may be provided for regarding termination:

- mutual agreement of the parties;
- according to the relevant opinion of a medical institution that the employee's work in the relevant position (profession) is dangerous for the employee's health due to their health condition;
- in the event of a high probability of contracting an occupational disease at the relevant workplace during the performance of the labour function for a certain period of time;
- when the employer undertakes an obligation in writing (on paper or through an electronic information system) to conclude a new employment contract with the employee after a certain period of time due to a decrease in the volume of work or services provided; and
- other circumstances determined by the parties in compliance with the requirements of this norm.

Accordingly, where specified by the employment agreement as an additional circumstance of termination, mutual termination agreement of the parties is acceptable.

The legislation stipulates that such circumstances envisaged by the parties shall not contradict the principles of ensuring the rights of the employee and the

employer established by the principles of the Labour Code, and they cannot degrade the parties' honour and dignity by attempting to restrict their rights.

In any case, such termination must be formalised with a reasoned order (disposal, decision) of the employer. When employment contracts concluded in the form of an electronic document are terminated, the employer's order (disposal, decision) to this effect is signed with an enhanced electronic signature in the electronic information system and placed in the employee's electronic cabinet created in the information system.

7.5 Protected Categories of Employee

Except in the event of liquidation of an enterprise and the termination of a fixed-term employment contract, in the following cases, the termination of employment contracts by the employer on its own initiative is prohibited:

- pregnant women, as well as women with children under the age of three, and men raising children under the age of three alone;
- employees who are the sole source of income and are raising children under the age of school age alone;
- employees who have temporarily lost their ability to work;
- due to the fact that the employee is suffering from diabetes or multiple sclerosis;
- due to the fact that the employee is a member of a trade union or any political party;
- employees who have a disabled child or another family member who has been determined to be disabled due to 81–100% impairment of body functions; and
- while on vacation, on a business trip, as well as during the period of participation in collective negotiations.

8. Disputes

8.1 Wrongful Dismissal

Grounds for a Wrongful Dismissal Claim

According to the Labour Code, an employee can apply to the court if the employer terminates the labour rela-

tionship with the employee by violating the provisions of the Labour Code in the following ways.

- By violating the grounds for termination of the employment contract, such as:
 - (a) grounds stipulated in **7.1 Grounds for Termination**;
 - (b) the procedure for termination of an employment contract by an employee;
 - (c) the procedure for terminating a fixed-term employment contract;
 - (d) the grounds for terminating an employment contract in cases beyond the parties' control;
 - (e) the rules for regulating its termination in cases provided for in the employment contract.
- Without complying with the requirements of the rules regarding measures taken when an employment contract is terminated by the employer and regarding conditions limiting the termination of an employment contract.
- Without paying attention to the employees and circumstances in which termination of an employment contract is prohibited, as stipulated in **7.5 Protected Categories of Employee**.

Consequences of Claim

Before applying to court regarding individual labour disputes, participation in an initial mediation session is required. When an employment dispute eventually reaches the court, the judge will review the case's facts and the statement of claim and then take one of the following actions.

- To render a judgment ordering the employee's reinstatement to their former position with payment of wages for the mandatory period of absence. The court may also provide in its judgment that the employer compensates the employee for the amount of damages claimed. The amount of damages includes:
 - (a) the employee's average salary for the period of non-employment resulting from the dismissal;
 - (b) costs incurred for retaining legal advocate to defend the employee's rights in court;
 - (c) moral damages claimed in the statement of claim;
 - (d) expenses arising from borrowing funds or selling personal property due to unemployment;

and

(e) any other related costs.

- To issue a writ approving the parties' settlement agreement. If, during the court proceedings on an individual employment dispute, the employer and the employee enter into a written settlement agreement by mutual consent, the judge shall issue an order to enforce the obligations set forth in that agreement.

8.2 Anti-Discrimination

Azerbaijan has ratified International Labour Organization Convention No 111 of 1958 on Discrimination in Respect of Employment and Occupation. Thus, discrimination regulated in this Convention is sufficient grounds for an anti-discrimination claim. The Labour Code furthermore specifies and expands such grounds, prohibiting:

- discrimination on the basis of citizenship, gender, race, religion, nationality, language, place of residence, property status, socio-economic origin, age, family status, beliefs, political views, membership in trade unions or other public associations, service position, as well as other factors not related to the employee's business qualities, professional competence, and the results of their labour;
- refusal to hire, promote or dismiss persons living with the human immunodeficiency virus due to their infection with the human immunodeficiency virus, except for professions and positions in which employment is not allowed;
- refusal to conclude an employment contract or terminate an employment contract on the grounds that a person has multiple sclerosis, except for cases where the employer does not have a relevant job (position), as well as refusal to employ such persons in workplaces where the use of their labour is not allowed;
- refusal to conclude an employment contract, refusal to promote the employee at work, termination of an employment contract, and transfer to another job (profession, position) without the employee's consent due to their disability, except for cases where the health of a person with a disability prevents them from performing their professional duties or poses a threat to the health and labour safety of other persons; and

- reducing the salary of employees in any way and paying them less than the minimum wage set by the state, in violation of the principles of non-discrimination.

Since each party is under obligation to prove their claim with legal grounds, the employee bears the burden of proof for a discriminatory behaviour by the employer.

An employee who has been discriminated against may apply to court with a request to restore their violated right. This implies that the relief will consist of the approval of the grounds on which the employee was discriminated against, namely being appointed to the position they applied for, concluding the employment they were denied.

8.3 Digitalisation

All civil cases, including labour disputes, are handled electronically through the “Electronic Court” information system. In courts where this system is applied, court proceedings on labour disputes, including sending and receiving applications, complaints and other documents, as well as delivering court documents to the participants, are carried out through an electronic cabinet created in the “Electronic Court” information system. The system uses an enhanced electronic signature and certified electronic signature tools for electronic document circulation.

Participation of the Parties by Videoconference

For the conduct of court proceedings using a videoconference connection system, the court shall issue a writ on its own initiative or based on a reasoned motion of the parties. The grounds for using a videoconference without the direct participation of the person participating in the case, their representative (legal representative), lawyer, witness, expert, specialist, and translator in the courtroom are:

- the impossibility to personally attend the court session due to a valid reason;
- inability to personally participate in the court session due to detention in places of deprivation of liberty or prison;

- inability to directly participate as a result of natural or man-made disasters, epidemics, emergencies, martial law or force majeure; and
- other cases in order to prevent unnecessary prolongation of court proceedings.

According to the Civil Procedural Code, the technical means used must ensure the quality of sound and image and their real-time transmission to the courtroom, the transparency of the proceedings and compliance with other fundamental principles and conditions, as well as information security. Such court hearings and procedural actions must be videotaped, and a relevant protocol must be drawn up in accordance with the videotape, and the videotape must be attached to the case file on an electronic medium.

9. Dispute Resolution

9.1 Litigation

Specialised Employment Forums

While there are no specialised courts to deal with labour disputes, the Labour Code regulates special ways for the resolution of collective labour disputes (unlike individual labour disputes). The subject matter of collective labour disputes covers issues relating to collective bargaining agreements and interests of collective members. Parties are employers, employees (labour collective or its part) or trade unions. Resolution through court proceedings of such disputes is not stipulated. However, the following conciliation methods are used.

- Conciliation commission – Established within three working days from the date of the dispute and formalised by the relevant order (disposal, decision) of the employer and decision of the employees’ representatives.
- Intermediary – Determined by mutual agreement of the parties from among highly qualified and influential individuals who have no interest in the outcome of the dispute.
- Labour arbitration – Temporary body established by a joint decision of the parties no later than five working days from the date of agreement to refer the collective labour dispute to labour arbitration.

The binding force of the final award of the arbitration can be predetermined by the parties.

Class Action Claims

Azerbaijani law does not provide for class action claims; but, as the law stands, the court may already decide to order the joinder of separately filed claims.

Representation in Courts

The law allows individuals with the necessary legal capacity to personally handle their lawsuits. Any employee may file a claim with the court through a representative. The representative can be the employee's close relative or an attorney whose authority is duly formalised.

As evident, hiring an attorney is not compulsory, but there are exceptions: in cassation and additional cassation proceedings, as well as when a judicial act is reviewed in newly opened cases, the employee shall participate in court sessions only together with a lawyer.

9.2 Alternative Dispute Resolution

According to the recently adopted Law "On Arbitration", labour disputes cannot be resolved in arbitration. However, as indicated in **9.1 Litigation**, parties to collective labour disputes may agree to solve their issue in labour arbitration in accordance with the Labour Code, which differs fundamentally from the arbitration defined in that Law. Unlike standard arbitration stipulated in the Law, which involves dispute resolution by an arbitration court issuing legally binding decisions, labour arbitration for collective disputes operates through a temporarily established body rather than a formal court process.

The parties may agree in advance on the binding nature of the decisions of the labour arbitration. The term for consideration of the disputes shall not exceed seven business days. The decision of the labour arbitration shall be adopted by a majority vote and shall be formalised in a protocol.

If the parties have agreed in advance on the binding nature of the decisions, the dispute shall be considered definitively resolved by the arbitration decision and the continuation of the dispute shall not be allowed.

To reiterate, individual labour disputes may not be heard in arbitration under the Law "On Arbitration". However, collective arbitration disputes may be decided by arbitration method enshrined in the Labour Code. No practice of such collective employment dispute arbitration exists.

9.3 Costs

In accordance with the general rule, the court decides to award the party in whose favour the judgment is rendered a reasonable amount for the costs of assistance provided by an advocate, taking into account the specific circumstances and the information presented, to be recovered from the other party. In cases where the mandatory participation of a lawyer is required, if the persons participating in the case do not have sufficient funds to pay for the advocate's services, the court, upon the written application of the persons participating in the case, shall ensure the participation of the advocate at the expense of the state.

Trends and Developments

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Caspian Legal Center (CLC) is one of the few premier Baku-based consulting firms combining legal and tax & accounting practices. Both departments of CLC have earned international recognition from Chambers and Partners and have received ITR's Tax Firm of the Year and Transfer Pricing Firm of the Year awards in the CIS region. CLC primarily supports multinational

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Introduction

Azerbaijan's labour legislation has undergone significant transformation in recent years, adapting to modern employment practices and post-conflict reconstruction needs. In the legislative context, developments include the digitalisation of employment contracts, special incentives for workers in liberated territories, and strengthened administrative penalties. In the judicial context, the Supreme Court practice balances employers' rights with employees' protections in specific termination cases.

Recent Legislative Changes

Increase in the statutory minimum wage and increase in the average monthly nominal wage threshold

From 1 January 2024, the minimum monthly wage has been increased to AZN 345 and, according to the Order of the President dated 23 December 2024, it is further increased to AZN 400 from 1 January 2025. In the same vein, the average monthly nominal wage threshold has been raised from AZN 1002.8 to AZN 1062.9 as of January 2025.

Combating informal employment relations

Azerbaijan has implemented reforms to combat informal employment relationships through comprehensive amendments to the Code. The legislative changes in 2021 established "the prohibition on the documentation of labor relations by civil-law contracts" as one of the fundamental principles of the Code. It enshrines specific conditions for identifying labour relations, and it requires immediate conversion to employment contracts upon identification of any such conditions.

The same year, the Cabinet of Ministers of Azerbaijan approved the Regulation "On Conducting and Coordination of Control Measures in the Field of Legalization of Informal Employment". Based on these, the procedure for supervision, the scope and responsibilities of the bodies implementing it have been clarified, and the creation of a single electronic information resource is envisaged.

Through such measures, now the legislation provides more robust protection for social security rights of employees (receiving benefits established by law for unemployment, receiving additional wages when

working overtime, receiving a pension in the future, etc). Further, it prevents damage to tax and social insurance revenues of the state.

Labour relations of specialists working in the liberated territories of Azerbaijan

After the end of the Second Nagorno-Karabakh War, in 2022 special provisions concerning labour relations of specialists working in the liberated territories of Azerbaijan (hereinafter "the specialists") have been added to the Labour Code (hereinafter "the Code"). These provisions are in force until 1 January 2028.

The specialists are people with a state document on vocational, secondary specialised and higher education, at least 24 months of work experience within the last 60 months, and working on the basis of an employment contract in the liberated territories (except for persons with special ranks). They have the right to use the benefits and privileges provided for in the Code and other laws of Azerbaijan in cases where the following conditions are met:

- if the employer with whom the specialists have concluded an employment contract is registered for tax purposes in the liberated territories;
- if the workplace of the specialists under the employment contract is located in the liberated territories; and
- if the specialists settle in the liberated territories.

They are granted additional leave for a period of five calendar days, regardless of the duration of the main and additional leaves. Additionally, increases (coefficients) are determined to ensure the payment of high salaries to them. These regulations incentivise and support the repopulation and economic development of Azerbaijan's liberated territories.

Amendment to Employee Business Trip Regulations

The Ministry of Finance amended the Employee Business Trip Regulations (hereinafter "the Regulations") on 9 October 2024.

The 40-day duration limit for business trips now applies to all employees, including diplomatic staff of international organisations and representatives of

other organisations. Mandatory passenger insurance payments have been removed from the list of transportation costs.

The regulation now elaborates on both domestic and international business trips.

Domestic business trips

For domestic business trips, daily expenses are allocated as 70% for accommodation, 25% for meals and 5% for other services. To put it into perspective, before the amendment, the Regulation allocated only 20% for daily expenses (meals, communication, transportation and other services) without even specifying accommodation costs.

If the host provides the employee with accommodation and meals, 5% of the daily business trip expense norm is paid for each day. If only accommodation is provided, 30% of the daily business trip expense norm is paid for each day. If only meals are provided, 75% of the daily business trip expense norm is paid for each day.

International business trips

For international business trips, similar specification has been conducted. There is also an increased compensation when hosts provide only meals, rising from 60% to 65% of the daily allowance. The new regulations guarantee a minimum 5% payment even when hosts provide both accommodation and meals, whereas the previous version provided no compensation in such cases.

The amendments introduced clearer financial security measures. When hosts provide partial cash payments below standard thresholds, employees now receive both the difference and an additional 5% buffer. The previous version only covered the difference without this extra protection.

Modifications in the establishment of labour relations

In 2024, several significant amendments were made to the Code. These changes have not only been extensive in scope, but they have also taken into account the trends of the modern world, specifically digitalisation.

Responsibilities of employers

Additional responsibilities have been added to the key duties of employers. Employers are now required to ensure timely and full payment not only for compulsory medical insurance but also for mandatory state social insurance, unemployment insurance, and compulsory insurance against loss of occupational ability due to accidents and occupational diseases at the workplace.

Electronic conclusion of employment contracts

Except for those that must be concluded in written form with certain positions as required by labour legislation, employment contracts are now concluded in electronic document form. When amendments are made to such employment contracts, the original contract must be re-prepared and approved.

The recording of these employment contracts, amendments made to them, orders (instructions, decisions) related to them, as well as other orders (instructions, decisions), the recording of information about the employee's work activity, and the archiving of this information are all ensured through the electronic information system. Accordingly, when such an employment contract is concluded, employees are only required to present their identification card, not workbooks anymore. Employers are prohibited from requesting documents that can be obtained from relevant state information systems and databases.

The end of the collective conclusion of employment contracts and an employment contract notice

An interesting change is the abolition of norms regulating the collective conclusion of employment contracts and the respective abolition of such employment contracts.

Another change in labour legislation is the abolition of the concept of an employment contract notice. Accordingly, labour relations are now considered to have arisen when the employment contract is concluded in electronic document form in the electronic information system, not when the employment contract notice entered into the system. This change is also reflected in the rules regarding the legal effect of employment contracts. Except in cases prescribed by law, an employment contract or its amendment is con-

sidered concluded and comes into legal force when it is signed with an enhanced electronic signature by the parties from the date of the last signature.

Innovations in the termination of labour relations

Termination of employment contracts

Another amendment to the Code in 2024 is that the law now allows either party to terminate the employment contract during the probation period by notifying the other party not only on paper but also through the electronic information system three days in advance. Additionally, if the employer changes the terms of employment, the employee can terminate the employment contract by observing the appropriate notice period.

Termination of the employment contract comes into legal force from the date the relevant order (instruction, decision) is entered by the employer into the system. The termination date of the employment contract cannot be set earlier than the date the order (instruction, decision) on the termination is signed (except in cases provided for by law).

Changes have also been made regarding the termination of fixed-term employment contracts. The notice period for terminating them has been set at a minimum of one week before the expiration of the contract. If neither party informs the other of the termination of the contract due to the expiration of the term, the employment contract is extended for the period specified in the contract or considered indefinite in cases prescribed by law. If the employee is notified in accordance with the law, the employer may terminate the contract on the day the employee returns to work if the term of the fixed-term employment contract expires during the employee's absence for valid reasons.

Procedure for documenting termination of employment contracts

The employer may specify procedures for documenting the termination of the employment contract with the employee that differ from the procedures prescribed by law. If such procedures are not provided, then the termination of the employment contract, whether initiated by the employee, the employer, or due to circumstances beyond the control of the par-

ties, must be formalised by the employer's justified order (instruction, decision) in accordance with the grounds and procedures prescribed by law. When terminating employment contracts concluded in electronic form, the employer's order (instruction, decision) is signed with an enhanced electronic signature in the electronic information system and placed in the employee's electronic cabinet. Several changes have also been made to the content of the order on the termination of the employment contract.

Model form of the employment contract

In 2024, a model form of the employment contract inserted in the Code has been amended as well, and the scope of requested information is narrowed due to electronic documentation being used. Removed information regarding the employer, if they are a physical person, includes:

- the insurance payer's registration number (SUN);
- social insurance number (SSN);
- the name of the identification document, its series, number and issuance date; and
- the name of the authority that issued the identification document.

Removed data from the employee's information includes:

- citizenship;
- the name of the identification document, its series, number and issuance date;
- the name of the authority that issued the identification document;
- education, qualification, profession;
- the name of the educational institution graduated from; and
- social insurance number (SSN) has been excluded for employees whose employment contracts are executed in electronic document form.

The model form of the employment contract has also been updated with co-ordination-related amendments in line with the changes in this law.

New administrative offences in the field of labour

The Administrative Offences Code has undergone several changes pertaining to labour relations, which

came into effect on 5 May 2025. These modifications encompass not only the expansion of the scope of offences and the tightening of administrative penalties but also the improved application of supervision in the labour field.

Extended term of administrative measures

The scope of application of term limitation on implementation of administrative measures in the field of labour has been expanded. Even though the law has set a short duration (four months) for general liability, for offences deemed graver, this duration is one year. The one-year term previously applied only to violations of the labour legislation has now been implemented on labour protection rules, as well as investigation and recording of labour accidents. Thus, administrative measures may only be taken within one year from the day of commission of the above-mentioned offences.

Conditional application of administrative fine

A number of violations have been added to the list of events for the application of conditional administrative fines. Conditional application of fines implies giving a certain period for eliminating the legal violation and thus being exempted from paying the fine.

In the labour field, this type of administrative penalty may be imposed for violation of the rules for conducting attestation of employees and workplaces by the employer, as well as for non-payment or incomplete payment of the employee's labour and vacation pay, business trip expenses, benefits, and other payments provided for in labour legislation in violation of labour legislation.

New pertinent administrative offences

Changes have been made to the scope of application of the administrative offences that entails the failure to realise payments to the employee legally. If mathematical miscalculations and giving of payments were an exception to the relevant offences, now such exception is abolished. Ultimately any error falls into the scope of this offence. Therefore, without exception, non-payment or non-full payment in accordance with labour legislation constitutes an administrative offence.

If previously only non-compliance with the normal working and rest regime was an offence, currently a fine has been set for involving an employee in overtime in violation of the requirements of labour legislation as well. The Code regulates the exceptional cases in which overtime is allowed, limits of the work, circle of persons that are prohibited from being involved in this work, and other related matters. Consequently, non-compliance with any of the given provisions is considered an offence that leads to liability.

Changes have been made to the administrative offence regarding mandatory insurance within labour relations. Previously a fine was imposed for failure to conclude a compulsory insurance contract with an insurer by individuals or legal entities that were required to compulsorily insure the relevant risks. Now the failure of mandatory insurance of each employee against the loss of professional work capacity as a result of occupational accidents and occupational diseases also constitutes liability.

Additionally, although non-conclusion of an insurance contract was fined by AZN 500, currently this has been altered. Fines for non-conclusion of the insurance contract and failure to comply with the rules of mandatory insurance rules are set at AZN 1,500 for officials and AZN 5,000 for legal entities. When this administrative liability is applied, the appropriate mandatory insurance must be obtained within 20 days. During this period, the person cannot be held administratively liable again for the same violation. When violations are detected through special technical devices with photo or video-recording functions, the 20-day period is calculated from the day the violation is discovered.

Changes to fines for violations of workplace accident investigation procedures

Penalty amounts in the field of workplace accidents have been modified. The maximum penalty for failing to notify the Ministry of Emergency Situations on time has been increased from AZN 1,500 to AZN 2,200. Conversely, the minimum penalty for concealing the occurrence of an accident has been reduced from AZN 1,800 to AZN 1,000.

Different approaches have also been applied to sanctions related to the investigation process. The upper limit of the penalty for failing to prepare a report after investigating an incident has been raised from AZN 2,000 to AZN 2,200. However, the lower limit of the penalty for avoiding the preparation of a report about the investigation has been reduced from AZN 1,800 to AZN 1,500.

Increased accountability and reporting to the Ministry

The scope of mandatory instructions from the Ministry of Labour and Social Protection of the Republic of Azerbaijan has been expanded for participants in labour relations. Penalties are now imposed for non-compliance with instructions regarding labour documentation, conclusion and implementation of collective agreements, regulation of employee insurance, and compliance with labour protection norms and rules.

The legislation has also established information submission obligations in this area. Liability arises for failing to provide necessary information related to all violations reflected in the norm or for not providing it completely, correctly, or on time. Officials are fined from AZN 1,000 to AZN 1,500, and legal entities from AZN 2,000 to AZN 2,500. Thus, employers' responsibility is primarily increased to strengthen control over compliance with labour legislation.

New workplaces where the Labour Code applies

In accordance with the amendments entering into force in 2025, the Code now applies to diplomatic missions of the Republic of Azerbaijan as well.

The law acknowledges that international service creates unique circumstances, as families may need to relocate quickly when one spouse serves abroad. Hence, it establishes special procedures for ending employment contracts of the spouse of an employee of a diplomatic mission or consulate of Azerbaijan or who has been assigned by the President or Ministry of Foreign Affairs to work with international organisations abroad. These contracts may be terminated on the date specified in the spouse's application, provided that the spouse works in a designated position in:

- a state body;
- a public legal entity established on behalf of the state;
- a legal entity owned by the state and the controlling share (stocks) of which belongs to the state; or
- a budgetary organisation.

Moreover, the Code grants special benefits in such cases. Namely, such spouses can apply to take up their previous position while their partner is working at the diplomatic mission, consulate or international organisation abroad, or within 60 calendar days after that assignment ends. When such a request is made, the spouse's qualifications and skills will be evaluated, and they will be reinstated to their previous position. If the original position is unavailable, they will be offered another position equivalent to it.

Recent Supreme Court Practice

The Supreme Court of Azerbaijan has always frequently addressed labour disputes, particularly those related to the termination of employment contracts. However, in recent years, their approach has become more precise, and they have also addressed certain new issues.

The Court underscores that employers bear the burden of substantiating their decisions on the termination of the employment contracts and must duly consider the circumstances and categories of employees specified in the Code for whom dismissal is prohibited. Regarding the second scenario, the Court established new legal practice in 2025.

The Court emphasised that in cases where the employee fails to fulfil their job responsibilities and commits gross violations of labour discipline, the employer has the right to terminate the employment contract. The mere possession of protected status does not constitute sufficient grounds for exemption from dismissal proceedings. Unless there is a causal link between the employee's violation and their privileged status, the employer's prerogatives must be upheld, and the termination should be deemed legally valid. This judicial approach reflects an optimal equilibrium between protecting employers' interests and acknowledging employees' protection.

BRAZIL

Law and Practice

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Tortoro, Madureira & Ragazzi Advogados offers legal services covering the analysis of labour contingencies and liabilities, staff restructuring, employee allocation, company closures, outsourcing, and remuneration structuring (including salaries and benefits). The firm also advises on implementing benefit plans such as stock options, bonuses and profit-sharing, in addition to employment contract amendments, domestic and international employee transfers, and collective bargaining matters. The firm's nationwide labour litigation practice includes representing clients at all levels of the Labour Courts (first instance, Re-

gional Labour Courts and the Superior Labour Court), handling both individual and collective claims, as well as public civil actions. The team also acts in administrative proceedings, assisting with defences in preparatory procedures and public civil inquiries led by the Public Prosecutor's Office. Tortoro, Madureira & Ragazzi Advogados provides support in responding to infraction notices issued by the Regional Superintendence of Labour and Employment and during inspections, prohibition notices, and other official labour proceedings.

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1. Employment Terms

1.1 Employee Status

It has become customary to refer to workers who perform operational, technical or manual activities as “blue-collar” employees. They are also called “workers” or “manual labourers” and work in industry, construction, services, health, agriculture, etc. They are plumbers, electricians, nursing technicians, mechanics, craftsmen, bricklayers, petrol station attendants, painters, bakers and many others. Their work requires manual skills or technical training.

In turn, “white-collar” employees are workers in administrative and managerial areas, which require intellectual activities and usually require higher education. They are bosses, managers, superintendents, lawyers, accountants, economists, etc.

Over time, as a spin-off from the above, other categories have been created, such as “pink-collar” for traditionally female activities (manicurists, beauticians); “green-collar” for activities related to the environment and ecology (forest engineers); “gold-collar” (highly qualified and highly paid professionals); “black-collar” for clandestine or illegal activities (gambling, prostitution); “new-collar” for technology and start-up sector personnel (developers, UX designers).

Regardless of the “colour of the collar”, Brazilian labour laws apply equally to all categories, respecting the natural specificities of each one.

1.2 Employment Contracts

As for their duration, individual employment contracts can be concluded for an indefinite or fixed term. As the name suggests, indefinite contracts have no defined duration and can last for decades, following the principle of continuity of employment. This is the standard contract under Brazilian labour law. An exception to the rule is the fixed-term employment contract, which can only be entered into if there is transience in the employee’s service or the employer’s activity, with a maximum term of two years, and in cases of probationary periods, which cannot exceed 90 days. Employment contracts can be tacit or express, verbal or written.

Although not required by law, case law has established the need for fixed-term contracts to be formalised in writing. For their validity and effectiveness, employment contracts must have a capable agent, a lawful, possible, determined or determinable object, and a form prescribed or not prohibited by law. It will be necessary to include:

- the identification of the parties;
- the position and function;
- the workplace;
- the working hours and schedule;
- the salary and benefits;
- the start date (and end date, if determined);
- the conditions of termination; and
- specific clauses (such as confidentiality, teleworking, possibility of transfer, agreement to travel, time bank, on-call duty, reimbursement of losses, etc).

1.3 Working Hours

The maximum permitted working hours are eight hours per day and 44 hours per week. Any hours worked in excess of this will be considered overtime. Flexibility is possible. The normal daily working hours may be increased by up to two hours, subject to individual or collective agreement. These hours may be compensated or paid with a minimum increase of 50%. Exceptionally, a working day of 12 consecutive hours may be established, followed by 36 uninterrupted hours of rest.

1.4 Compensation

The minimum wage is a constitutionally guaranteed right for Brazilian workers, with a uniform value throughout the national territory, and is intended to meet basic vital needs such as housing, food, education, health, leisure, clothing, hygiene, transport and social security. Workers who receive the minimum wage are entitled to receive a 13th-month salary and any bonuses and premiums paid by their employer. The minimum wage is set by the Federal Government and adjusted annually by Presidential Decree, based on the variation in the National Consumer Price Index (INPC), with a variable real increase, in accordance with the New Fiscal Framework and the provisions of Law No 15,077 of 27 December 2024.

1.5 Other Employment Terms

Holiday Leave

Holidays are due after 12 months of work, without loss of pay and with a maximum duration of 30 days, or less, depending on the number of absences during the accrual period. Remuneration during the holiday period will be one third higher than normal. It is permitted to split the holiday into up to three periods, provided that one of them is not less than fifteen consecutive days and the others are not less than five days. If desired, the employee may convert one third of the holiday period into a cash bonus. The holiday period will be chosen by the employer.

Maternity Leave

There is mandatory maternity leave, normally 120 days, paid by the official social security system. This right is extended to cases of adoption, in which case the leave period will vary from 120 to 30 days, depending on the age of the adopted child. In cases

of work accidents and incapacitating illnesses, leave is also mandatory. Leave of up to 15 days is paid by the employer, and any period exceeding this limit is paid by the official social security system. With regard to children with disabilities, Brazilian labour legislation does not stipulate compulsory leave. This matter has been the subject of individual and collective negotiations, and there are precedents of mothers obtaining judicial authorisation to reduce their working hours in order to care for disabled children. Parents have the right to take one day off work per year to accompany their child up to six years of age to a medical appointment (regardless of whether or not the child has a disability).

Confidentiality

The duty to maintain confidentiality regarding strategic information relating to the employer is implicit in the employment contract, and its breach by the employee may give rise to dismissal for just cause, which does not prevent the contract from being supplemented with other confidentiality clauses. The stipulation of confidentiality in the contract cannot violate public policy rules or impose disproportionate obligations. Permanent, excessively long or indefinite clauses are also not accepted, as they may be considered null and void for violating the principle of legal certainty. There must be a specific and reasonable time limit, compatible with the protected interest. Clauses that prevent communication with supervisory bodies, reporting of irregularities or compliance with legal obligations that involve the disclosure of information will also be ineffective. With regard to non-defamation clauses, it is the natural obligation of the employee to refrain from acts that damage the honour or good reputation of their employer or superior, under penalty of justified dismissal.

Employee's Liability

As for liability, the employee's legal and contractual obligations are:

- obedience and subordination;
- diligence and zeal;
- loyalty and fidelity;
- secrecy and confidentiality; and
- respect for health and safety standards at work.

Damages caused to the employer shall be compensated by the employee, if there is a contractual provision to that effect, or if the damage was caused intentionally. If the form of compensation chosen by the parties is a monthly salary deduction, this shall be limited to 70% of the salary received, in order to ensure a minimum salary in cash for the worker.

2. Restrictive Covenants

2.1 Non-Competes

Although there is no express provision in the legislation, non-compete clauses are considered valid based on the principle of contractual freedom (Article 444 of the Labour Code – “Consolidation of Labour Laws”, or CLT). It is important to note that, under the terms of the sole paragraph of that article, it is a requirement that the employee not be underprivileged, ie, the employee must have a university degree and receive a monthly salary equal to or greater than twice the maximum limit of the benefits of the General Social Security System.

To be valid, the clause must observe reasonable time and territorial limitations, with case law admitting up to two years as reasonable and territorial delimitation in locations where the employer actually operates. It is also important to clarify the specific object (ie, which activities are actually covered), and, finally, that there be financial compensation. Compensation to the employee must observe maintenance of the standard of living, ie, the proportion of remuneration.

It is therefore important that the clause includes rights and duties for both parties, not just the employee. Violation of the clause should be challenged in the Labour Court.

2.2 Non-Solicits

As set out in 2.1 Non-Competes, although there is no express provision in the legislation, non-solicitation clauses are considered valid based on the principle of contractual freedom (Article 444 and sole paragraph of the CLT). Therefore, in Brazil, it is permissible to include non-solicitation clauses, provided that the parameters are reasonable and do not absolutely impede the free exercise of the profession, freedom of

work or competition. It is preferable that the clause be included at the beginning of the employment relationship, observing temporal and territorial limits, and a clear commercial justification is recommended.

Unfair or excessively broad clauses may be considered abusive and annulled by the courts.

3. Data Privacy

3.1 Data Privacy Law and Employment

The General Data Protection Law (LGPD), Law No 13,709/2018, applies in the context of the employment relationship, from the processing of a candidate's data to the termination of the employee.

It is the employer's responsibility, with the support of the compliance and legal departments, to observe the LGPD's principles and adapt the company's procedures as necessary to protect employee data, where applicable. This means safeguarding sensitive information and always allowing the employee to access their data; they can also request its portability or deletion, if applicable.

4. Foreign Workers

4.1 Limitations on Foreign Workers

The hiring of foreign employees must comply with Brazilian law in its entirety. Foreigners may not receive a salary higher than that of Brazilians performing the same function, and the company must first dismiss the foreign worker rather than terminate the contract with the Brazilian worker in the same position. The CLT provides in Chapter II, Section I, Article 352 et seq for a rule requiring a minimum of two thirds of Brazilian workers on the staff, which is therefore a limitation on hiring.

Foreign workers must have the appropriate visa for the job, and, if the job is technical, their diploma must be validated via the Carolina Bori Platform.

4.2 Registration Requirements for Foreign Workers

As mentioned, foreign workers need a specific visa to work in Brazil. Currently, the Ministry of Justice and Public Security has the General Co-ordination of Labour Immigration (CGIL). The relevant legislation is Migration Law 13,445 of 24 May 2017, and Decree 9,199 of 20 November 2017.

Labour immigrants must register with the Immigration Management and Control System, fill out the form and submit the relevant documentation. Once working in Brazil, workers are subject to all relevant legislation and have all the rights of Brazilian workers.

5. New Work

5.1 Mobile Work

Remote work is authorised by law and regulated by Articles 75-A to 75-F of the CLT. Telework is the provision of services outside the employer's premises, whether predominantly or not, using information and communication technologies.

Attending the employer's premises, even on a regular basis, to perform specific activities that require the employee's presence at the establishment does not disqualify the remote work regime. Employees subject to the telework or remote work regime may provide services by the hour or by production or task. In the case of services provided under a teleworking or remote work regime by production or task, there is no obligation to control working hours.

The teleworking or remote work regime is not to be confused with or equated to the occupation of tele-marketing or call centre operator (situations that have their own legal regulation, with shorter working hours).

The time spent using the necessary technological equipment and infrastructure, as well as software, digital tools or internet applications used for teleworking, outside the employee's normal working hours does not constitute on-call time or standby duty, unless provided for in an individual agreement or in a collective labour agreement or convention.

The adoption of teleworking or remote working arrangements is permitted for interns and apprentices.

Employees working under teleworking arrangements are subject to the provisions of local legislation and collective labour agreements relating to the territorial base of the employee's place of work. The employment contract of an employee hired in Brazil who chooses to telework outside the national territory is subject to Brazilian law, except for the provisions of Law No 7,064 of 6 December 1982, unless otherwise stipulated between the parties.

An individual agreement may provide for the hours and means of communication between the employee and employer, provided that legal rest periods are ensured. The provision of services in the form of teleworking must be expressly stated in the individual employment contract.

A change between on-site and teleworking may be made provided that there is mutual agreement between the parties, recorded in a contract amendment. A change from teleworking to on-site work may be made at the employer's discretion, with a minimum transition period of 15 days, with a corresponding record in a contract amendment. The employer shall not be liable for expenses resulting from the return to on-site work if the employee chooses to telework or work remotely outside the location specified in the contract, unless otherwise agreed between the parties.

The provisions relating to responsibility for the acquisition, maintenance or supply of the technological equipment and infrastructure necessary and appropriate for the performance of remote work, as well as the reimbursement of expenses incurred by the employee, shall be set out in a written contract. The utilities necessary for the performance of the work are not included in the employee's remuneration.

The employer shall instruct employees, expressly and conspicuously, on the precautions to be taken to prevent illness and accidents at work. The employee shall sign a statement of responsibility committing to follow the instructions provided by the employer.

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Employers shall give priority to employees with disabilities and employees with children or children under legal guardianship up to four years of age when allocating positions for activities that can be performed through telework or remote work.

5.2 Sabbaticals

The only provision in the CLT that comes close to the concept of sabbatical leave is the suspension of the employment contract for a period of two to five months for the employee to participate in a professional training course or programme offered by the employer, with a duration equivalent to the contractual suspension, subject to provision in a collective bargaining agreement or collective labour agreement and formal consent of the employee.

There is no legal provision for leave outside this scenario.

The absence of legal provision, however, does not prevent sabbaticals from being provided for in collective instruments (collective bargaining agreement or collective labour agreement).

It is also possible to negotiate them individually. However, for individual negotiations, there will be greater legal certainty only for those employees who have higher education and remuneration above twice the ceiling of the RGPS (general social security regime, currently BRL16,314.82), since the CLT ensures that only employees who meet these two requirements can negotiate individually with the employer and that such negotiation will prevail in the event of a conflict with the law or with the collective instrument of the category.

5.3 Other New Manifestations

In recent years, one of the most relevant and discussed innovations in the labour law area has been the growing use of artificial intelligence (AI) and algorithms in managing labour relations. Technological advancements have allowed companies across various sectors, especially those linked to the so-called “platform economy”, to begin employing automated systems to monitor, evaluate and even hire workers. This phenomenon has sparked a series of legal reflections on the protection of workers’ rights, the defini-

tion of employment relationships, and the ethical limits of automation in labour relations.

In the Brazilian context, the discussion has gained momentum mainly due to the popularisation of transportation and delivery apps, such as Uber, iFood and Rappi. On these platforms, labour management is carried out almost entirely through algorithms, which define routes, evaluate performance, assign tasks, and can even “disconnect” workers for poor performance. This scenario raises questions about algorithmic subordination, a concept used to describe workers’ dependence on the guidelines and commands established by automated systems, often equating it to the traditional legal subordination established by the Consolidation of Labour Laws (CLT).

Legal debates focus on issues such as the transparency of algorithmic criteria, the possibility of reviewing automated decisions, and the obligation of companies to provide clear information about how these tools operate. Several experts advocate the need for specific regulations to ensure that the use of AI respects fundamental rights, such as human dignity, the protection of personal data, and the right to disconnect.

The Brazilian Judiciary has already faced cases in which workers seek recognition of their employment relationship due to the subordination exerted by the algorithm. Recent decisions show that the Courts’ understanding remains heterogeneous, varying depending on the analysis of the specific case and the evidence presented. However, there is a growing recognition that technology, when used to direct and control the provision of services, can indeed constitute typical elements of the employment relationship, challenging traditional concepts of labour law.

In conclusion, the discussion about the use of artificial intelligence in labour relations represents one of the greatest contemporary challenges for labour law. Addressing this issue requires not only updated legislation but also a proactive stance from legal practitioners, who must seek balanced solutions to ensure worker protection without hindering technological advancement and business innovation. The future of work will inevitably be increasingly digital and auto-

mated, and it is up to the law to adapt to this new reality in an ethical and socially responsible manner.

6. Collective Relations

6.1 Unions

A trade union serves to defend the rights and interests of workers, whether in relation to working conditions, wages, benefits or labour rights. They act as representatives of workers in negotiations with employers and government agencies, seeking better working conditions and preventing setbacks in the rights that have been achieved. In addition, trade unions have broad legal representation, meaning they can represent the entire category or just a fraction of it in court. Trade unions are also responsible for entering into collective agreements (trade union x company) or collective conventions (business trade union x category trade union) in order to regulate labour relations, as authorised by the Constitution.

6.2 Employee Representative Bodies

Employee Representative Committees (CRE) are bodies created by the Labour Reform (Law No 13,467/2017) to promote worker participation in the company and strengthen dialogue between employees and employers. These committees are elected in companies with more than 200 employees and their main objective is to improve the relationship between the company and its employees, seeking solutions to conflicts and monitoring compliance with labour laws.

In companies with more than 200 employees, the election of a committee to represent them is guaranteed, with the aim of promoting direct understanding with employers. The committee will be composed of the following:

- in companies with more than 200 and up to 3,000 employees, three members;
- in companies with more than 3,000 and up to 5,000 employees, five members; and
- in companies with more than 5,000 employees, seven members.

If the company has employees in several states of the Federation and in the Federal District, the election of

a committee of employee representatives per state or in the Federal District shall be ensured, in the same manner as described above.

The committee of employee representatives shall have the following duties:

- represent employees before company management;
- improve the relationship between the company and its employees based on the principles of good faith and mutual respect;
- promote dialogue and understanding in the workplace in order to prevent conflicts;
- seek solutions to conflicts arising from the employment relationship quickly and effectively, aiming at the effective application of legal and contractual rules;
- ensure fair and impartial treatment of employees, preventing any form of discrimination based on gender, age, religion, political opinion or union activity;
- forward specific claims from employees within its scope of representation;
- monitor compliance with labour and social security laws, collective bargaining agreements and collective labour agreements;
- the decisions of the employee representative committee shall always be collegial, with a simple majority;
- the committee shall organise its activities independently;
- the election shall be called at least 30 days in advance of the end of the previous term of office, by means of a public notice that shall be posted in the company, with wide publicity, for the registration of candidates;
- an electoral committee shall be formed, composed of five employees who are not candidates, to organise and monitor the electoral process, with no interference from the company or the trade union;
- company employees may stand as candidates, except those with fixed-term employment contracts, suspended contracts or who are in their notice period, even if compensated;
- the candidates with the most votes in a secret ballot will be elected as members of the employee

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- representative committee, with proxy voting prohibited;
- if there are not enough candidates, the employee representative committee may be formed with fewer members;
- the term of office of the members of the employee representative committee shall be one year;
- a member who has served as an employee representative on the committee may not be a candidate for the two subsequent terms;
- the term of office as a member of the employee representative committee does not imply suspension or interruption of the employment contract, and the employee must remain in the exercise of their duties; and
- from the registration of the candidacy until one year after the end of the term of office, members of the employee representative committee may not be dismissed arbitrarily, meaning without disciplinary, technical, economic or financial grounds.

6.3 Collective Bargaining Agreements

In simple terms, both collective agreements and collective bargaining agreements are collective bargaining instruments that establish rules and working conditions, but with different levels of coverage. A collective bargaining agreement is an agreement between employers' and employees' unions, covering an entire professional category in a given region. A collective agreement, on the other hand, is an agreement between one or more workers' unions and one or more specific companies. The Federal Supreme Court ruled, in a binding opinion, that "collective agreements and conventions are constitutional when, considering the negotiated sectoral adequacy, they agree on limitations or waivers of labour rights, regardless of the specified explanation of compensatory advantages, provided that absolutely inalienable rights are respected".

The CLT establishes, in Article 611-B, the limitations on collective bargaining. This list is not exhaustive, meaning that it can be interpreted broadly by the courts, but it provides an indication of the most obvious prohibitions. The following rights may not be suppressed or reduced in collective bargaining agreements or collective labour agreements:

- professional identification standards, including entries in the Work and Social Security Card;
- unemployment insurance, in the event of involuntary unemployment;
- value of monthly deposits and severance pay from the Guarantee Fund for Length of Service (FGTS);
- minimum wage;
- nominal value of the thirteenth salary;
- remuneration for night work higher than that of daytime;
- protection of wages in accordance with the law, with intentional withholding constituting a crime;
- family allowance;
- paid weekly rest;
- remuneration for overtime work at least 50% higher than normal;
- number of days of holiday due to the employee;
- paid annual leave with at least one third more than the normal wage;
- maternity leave with a minimum duration of 120 days;
- paternity leave under the terms established by law;
- protection of the female labour market through specific incentives, in accordance with the law;
- notice proportional to length of service, with a minimum of 30 days, in accordance with the law;
- health, hygiene and safety standards at work provided for by law or by regulatory standards of the Ministry of Labour;
- additional remuneration for arduous, unhealthy or dangerous activities;
- retirement;
- insurance against accidents at work, paid for by the employer;
- action regarding credits resulting from labour relations, with a limitation period of five years for urban and rural workers, up to a limit of two years after the termination of the employment contract;
- prohibition of any discrimination regarding salary and admission criteria for workers with disabilities;
- prohibition of night work, dangerous or unhealthy work for minors under 18 years of age and any work for minors under 16 years of age, except as apprentices, from the age of 14;
- legal protection measures for children and adolescents;
- equal rights between workers with permanent employment and casual workers;

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- freedom of professional or trade union association for workers, including the right not to suffer, without their express and prior consent, any charges or salary deductions established in collective bargaining agreements or collective labour agreements;
- the right to strike, with workers deciding on the opportunity to exercise it and on the interests they should defend through it;
- legal definition of essential services or activities and legal provisions on meeting the urgent needs of the community in the event of a strike; and
- taxes and other third-party credits.

Rules on working hours and breaks are not considered occupational health, hygiene and safety standards.

7. Termination

7.1 Grounds for Termination

No reason is required for termination. Dismissal is an employer's right. Only dismissal for just cause requires a reason, as explained in **7.3 Dismissal for (Serious) Cause**.

Collective dismissals after 2017 may be carried out by express provision of law (Law No 13,467 of 2017).

Before 2017, the jurisprudence of the Superior Labour Court required prior collective bargaining with the union representing the category, given the negative economic impacts of dismissal.

7.2 Notice Periods

Advance notice is mandatory for indefinite contracts, except in cases of dismissal for just cause. In the event of resignation by the employee, advance notice is 30 days, which may be worked or compensated. In the event of dismissal by the employer, the notice period is a minimum of 30 days, plus three days for each year worked at the company if applicable, up to a maximum of 90 days.

During the notice period worked, the employee may have their working hours reduced by two hours per day or choose to take the last seven days of the period off, without loss of pay. The notice period, whether worked or compensated, counts as length of service

for all legal purposes (holidays, 13th-month salary, etc).

7.3 Dismissal for (Serious) Cause

Dismissal for just cause is the termination of an employment contract by the employer due to serious misconduct by the employee, as provided for in the Consolidated Labour Laws (CLT).

In dismissal for just cause, the employee will only be entitled to receive the balance of their salary and accrued holiday pay plus one third, and will not be entitled to prior notice, the 40% penalty on the FGTS, withdrawal of the FGTS, proportional holiday pay plus one third, and will not be able to apply for unemployment insurance.

There are no procedures to be followed. However, it is necessary to respect immediacy (the punishment must be adopted immediately after the discovery of the irregular act); proportionality (the misconduct must be serious enough to justify the most severe punishment provided for by law); and there can be no double punishment (ie, a misconduct that has already been punished with a warning or suspension cannot justify dismissal for just cause).

The CLT provides for the following conduct as grounds for dismissal for just cause:

- act of impropriety;
- misconduct or malpractice;
- habitual negotiation on one's own behalf or on behalf of others without the employer's permission, and when it constitutes an act of competition with the company for which the employee works, or is detrimental to the service;
- criminal conviction of the employee, *res judicata*, if there has been no suspension of the sentence;
- negligence in the performance of their duties;
- habitual drunkenness or drunkenness on duty;
- breach of company confidentiality;
- act of indiscipline or insubordination;
- abandonment of employment;
- act harmful to the honour or good reputation of any person committed in the course of service, or physical offences under the same conditions,

- except in cases of self-defence or defence of others;
- acts harmful to the honour or good reputation of or physical offences committed against the employer and superiors, except in cases of self-defence or defence of others;
 - constant gambling; and
 - loss of the qualification or requirements established by law for the exercise of the profession, as a result of the employee's wilful misconduct.

7.4 Termination Agreements

Termination by mutual agreement, or by agreement between the parties, is a form of termination of the employment contract where the employee and employer agree to terminate the employment relationship, based on Article 484-A of the CLT, included by the Labour Reform. In this modality, the employee receives half of the indemnified notice period and is entitled to withdraw 80% of the FGTS, but is not entitled to unemployment insurance.

Agreement Between the Parties

The employee and employer agree to terminate the employment contract.

Severance pay

The employee receives:

- salary balance;
- proportional holiday pay plus one third;
- proportional 13th-month salary;
- half of the severance pay (if applicable);
- half of the FGTS penalty (20% instead of 40%);
- right to FGTS – the employee can withdraw up to 80% of the FGTS balance; and
- no right to unemployment insurance – the employee is not entitled to receive unemployment insurance in this modality.

7.5 Protected Categories of Employee

No category of workers is protected from dismissal. However, there are specific cases of provisional stability. Provisional stability prevents the employer from terminating the employment contract without just cause during the period defined by law for each specific situation. This means that, in these cases, the employee can only be dismissed for serious reasons

such as serious misconduct or force majeure. This may be provided for by law or in a collective labour agreement.

The most notable cases in the legislation are as follows.

- Pregnant women – Pregnant women have stability from the confirmation of pregnancy until five months after giving birth.
- Accident victims – Workers who suffer an accident at work have job security for 12 months after being discharged from hospital and returning to work.
- CIPA members – Members of the Internal Accident Prevention Commission (CIPA) have job security from the moment they register their candidacy until one year after the end of their term of office.
- Union leaders – Union and co-operative leaders also have job security from the time of their candidacy until one year after the end of their term.
- Employee representatives – Employees elected as representatives in companies with more than 200 employees may also have job security.

8. Disputes

8.1 Wrongful Dismissal

Dismissals can be carried out without just cause and for just cause.

Dismissal without just cause is a right of the employer and does not depend on any justification. As a rule, therefore, there is nothing to contest.

Dismissal for just cause is one that, as a rule, is challenged in court. The grounds for questioning are:

- the alleged conduct is not described in the law as authorising just cause;
- even if the conduct is authorised by law, it was not serious enough to justify dismissal (ie, the employer should have warned or suspended the employee); and
- the duty of immediacy was not complied with, or there was double punishment.

The consequences of a successful claim are:

- the reversal of just cause with an order to pay prior notice;
- a 40% fine on the FGTS;
- authorisation to withdraw the FGTS;
- payment of proportional holiday pay plus one third; and
- payment of unemployment insurance.

8.2 Anti-Discrimination

Discrimination in the workplace is any practice that excludes, limits or hinders someone's access to or continued employment based on personal characteristics rather than professional qualifications or experience. This practice can take many forms, such as the following.

- Direct discrimination – When a person is treated differently because of a personal characteristic.
- Indirect discrimination – When an apparently neutral rule or practice disproportionately affects a specific group.
- Structural discrimination – When discrimination is internalised in society and institutions.

Law No 9,029/95 prohibits discriminatory practices in access to or maintenance of employment on grounds such as sex, origin, race, colour, marital status, family situation or age.

Termination of employment due to discriminatory acts, in addition to the right to compensation for moral damages, entitles the employee to choose between the following:

- reinstatement with full compensation for the entire period of absence, through payment of the remuneration due, adjusted for inflation and plus legal interest; and
- double the remuneration for the period of absence, adjusted for inflation and plus legal interest.

8.3 Digitalisation

The procedural rules applied to electronic proceedings are exactly the same as those applicable to paper-based judicial proceedings. Virtual hearings are permitted, which are recorded and whose main events are reduced to writing in a document attached to the proceedings.

9. Dispute Resolution

9.1 Litigation

The Labour Court is the branch of the judiciary that deals with matters relating to labour and labour relations. Class actions are possible, under the terms of specific legislation. As a rule, lawsuits are filed in the Labour Court by trade unions, workers' associations or the Labour Public Prosecutor's Office of Labour. Representation by unions is broad and unrestricted, as it derives from the authorisation of the Constitution. Representation by an association is limited to its members and the association's corporate purpose, and legal action can only be brought by an association that has been in existence for more than one year. Representation by the Labour Public Prosecutor's Office of Labour is broad and unrestricted, provided that there are diffuse or homogeneous individual rights in dispute.

9.2 Alternative Dispute Resolution

Arbitration is only possible on an individual basis for employees who receive remuneration exceeding twice the maximum limit established for Social Security benefits and to settle disputes relating to available property rights.

9.3 Costs

A prevailing party can be awarded attorney's fees or other costs provided they are not eligible for legal aid. However, currently, the Superior Labour Court determines that legal aid benefits are granted based solely on the employee's declaration that they are unable to cover the costs of the proceedings without jeopardising their livelihood.

BULGARIA



Law and Practice

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Penkova & Partners Law Firm was founded in 2000, and since then has maintained a strong focus on business law, building enduring relationships with both clients and partners. Penkova & Partners Law Firm provides legal consultancy services in the fields of commercial and corporate law, employment, construction, real estate and dispute resolution. The team is located in Sofia and comprised of six lawyers, three paralegals and two external legal consultants.

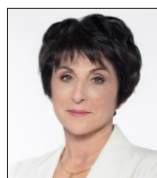
The team is noted for its in-depth knowledge of the applicable legislation, individual approach, effective legal solutions, loyalty and commitment to clients' needs. Penkova & Partners Law Firm is a member of Legal Netlink Alliance (LNA), a global network of carefully selected law firms, providing clients with access to high-quality legal representation across various jurisdictions.

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LAW FIRM

1. Employment Terms

1.1 Employee Status

In Bulgarian legislation, the terms “workers” and “employees” are used to distinguish types of labour, as opposed to the common “blue-collar” and “white-collar” categories. These terms highlight whether physical or mental labour is primarily used. Legally, both workers and employees are competent individuals who provide their labour in exchange for remuneration from an employer. A worker is generally engaged in physical labour, while an employee performs mainly mental tasks. For the purposes of this employment practice chapter, the terms “worker” and “employee” will be used interchangeably to cover both categories.

1.2 Employment Contracts

Types of Employment Contracts

Employment contracts may be established on a fixed-term or indefinite basis. Fixed-term contracts may apply in several specific cases, including for a defined period (up to three years unless otherwise specified by law or a Council of Ministers’ act), for the completion of particular work, as a temporary replacement for an absent employee, for the period before a competitively selected candidate fills a role, or for a specified term of office as required.

Written Form of the Employment Contracts

An employment contract must be signed in writing before work begins. The employer is required to register the employment contract, and any amendments, with the National Revenue Agency within three days of signing or modifying the contract. Employment contract terminations must be registered within seven days. Each employment contract must include essential details, such as:

- the names, ID numbers, and addresses of the parties involved;
- the employer’s representative (if a legal entity);
- the workplace location, including any remote work address (if applicable);
- the job title; and
- the code under the National Classification of Professions and Positions, as issued by the Minister of Labour and Social Policy.

Other key details are the contract’s start date and duration, entitlement to annual and extended paid leave, notice period requirements (equal for both parties), basic and additional regular remuneration, payment frequency, and the duration of the working day or week.

Employment Contracts With a Probation Period

Both indefinite and fixed-term employment contracts may include a probation period, allowing either party to assess the suitability of the role or the employee’s capabilities. For indefinite contracts, the probation period can last up to six months. For fixed-term contracts shorter than one year, the probation period is limited to one month. During this period, the party for whose benefit the probation is agreed can terminate the contract without notice. Any time during which the employee is on statutory leave or has not worked for valid reasons is not counted towards the probation period.

1.3 Working Hours

Working Hours

The regular working week in Bulgaria is up to 40 hours, typically spread across 8 hours per day over five days. The duration of the working time cannot be extended beyond this limit, except in specific cases outlined in the Labour Code. For employees working at night during a five-day working week, the maximum allowable working hours per week is 35 hours.

Reduced Working Time

Reduced working hours apply to employees working in conditions where the risks to their health and safety cannot be mitigated, regardless of the measures taken, as well as to employees under the age of 18.

Open-Ended Working Time

Given the nature of certain roles, an employer may, after consulting with employee and trade union representatives, establish open-ended working hours for specific positions. Under this arrangement, employees may be required to perform their duties beyond the regular working time. Excess hours on regular working days are compensated with an additional five days of paid annual leave, while work on weekends and public holidays is remunerated with overtime pay.

Flexible Working Time

Employers may set flexible working hours with variable limits, determining when employees must be at work and how attendance is recorded. Outside of mandatory hours, employees can choose when to start their workday. Any unworked hours may be made up on subsequent days within the same working week. The method for tracking working hours is outlined in the employer's internal labour regulations.

Shift Work

Where the nature of the production process requires it, work is organised into two or more shifts. The rotation schedule for shifts is determined by the employer's internal regulations.

Allocation of Working Time

Working time is typically calculated on a daily basis, but the employer may opt for a summarised calculation of working hours. This requires the employer to specify a reporting period, ranging from one to four months, during which the total working time is calculated. A collective agreement may extend this period to a maximum of 12 months.

Daily and Weekly Rest

Employees are entitled to an uninterrupted daily rest period of at least 12 hours. In a five-day working week, employees must receive two consecutive days off, one of which should, in principle, be Sunday. This ensures a weekly rest period of no less than 48 consecutive hours. In cases of summarised working time, the weekly rest period must be at least 36 consecutive hours.

Part-Time

The parties to an employment contract may agree on part-time work, where the employee works a reduced portion of the statutory working time. The contract should specify the duration and scheduling of these reduced hours.

Overtime

Overtime refers to work performed beyond the agreed-upon working hours, either at the employer's request or with their knowledge and consent. Overtime is generally prohibited, with exceptions allowed for tasks that cannot be completed within regular

working hours. Employees may refuse overtime if the conditions set out in the Labour Code, collective agreements, or other relevant regulations are not adhered to.

The maximum amount of overtime work allowed in a calendar year is 150 hours, or 300 hours in cases covered by a collective agreement. Specific limits on overtime include:

- 30 hours of day work or 20 hours of night work in one calendar month;
- six hours of day work or four hours of night work in one calendar week; and
- three hours of day work or two hours of night work across two successive working days.

Overtime pay is agreed upon by the parties but must meet the following minimum requirements:

- 1.5 times the normal wage for overtime on regular working days or under summarised working time;
- 1.75 times the normal wage for work on weekends; and
- double the normal wage for work on public holidays.

Work performed on public holidays, whether overtime or not, must be compensated at no less than double the employee's regular wage.

1.4 Compensation

Minimum Wage

The minimum wage in Bulgaria is determined annually by the Council of Ministers, along with the types and minimum amounts of additional labour remuneration and benefits that are not already specified by the Labour Code. For 2025, the minimum monthly wage is set at BGN1,077.

The minimum wage for the following calendar year is calculated using a formula defined in the Labour Code and cannot be lower than the minimum wage set for the previous year.

Monthly Gross Labour Remuneration

The monthly gross labour remuneration of the employees shall include:

- monthly base salary, determined in the individual employment contract;
- additional remuneration for length of service (no less than 0.6% of the monthly base salary per each year of service in relevant positions);
- other additional remuneration per the Labour Law (for overtime, night work, etc); and
- other additional remuneration of a permanent or temporary nature, stated in the individual employment contract or in the internal rules of the employer (including additional remuneration determined at the employer's discretion, bonuses for achieving performance or revenue targets, profit-sharing, a 13th salary, and any social benefits, etc).

1.5 Other Employment Terms

Paid Annual Leave

Every employee is entitled to a minimum of 20 working days of paid annual leave. Employees in certain categories, such as those with open-ended working hours or those working in hazardous conditions that pose risks to their health and safety, are entitled to additional paid leave, usually five working days or more.

Paid annual leave must be taken after obtaining written authorisation from the employer. It is not permissible to compensate paid annual leave with cash, except when the employment relationship is terminated.

Sick Leave

Employees are entitled to sick leave in cases of illness, occupational disease, workplace injury, or other situations specified in the Labour Code. The employee must submit a medical certificate for sick leave within two business days from the date of issuance.

The payment for sick leave is based on the duration of the illness. For the first two days of sick leave, the employer pays 70% of the employee's average gross daily remuneration. For the remaining sick leave days, the National Social Security Institute (NSSI) pays 80% of the employee's average gross daily remuneration, or 90% in the case of a workplace accident or occupational illness.

Unpaid Leave

An employee may request unpaid leave from the employer, regardless of whether they have used their paid annual leave or the length of their service. Unpaid leave of up to 30 working days is counted as part of the employee's length of employment service.

Leave of Absence

The employer is required to grant leave of absence in the following cases:

- marriage – two working days;
- blood donation – the day of the examination and donation, plus one additional day;
- death of close relatives – two working days for the death of a parent, child, spouse, sibling, parent-in-law, or other lineal relatives;
- summoned for legal matters – time off to attend court as a party to a case, witness, or expert;
- state or European representation – leave for participation in representative state bodies, special negotiating bodies, work councils, or European organisations, as well as for jury service;
- termination notice given by the employer – one hour per day during the notice period; and
- training and disaster protection volunteering – time off for training or participation in voluntary disaster protection formations.

Other Types of Leave

- Study leave – leave can be granted for 25 working days for each school year if the consent of the employer is granted. In addition, the employee is entitled to 20 working days or, if the employer has not granted consent, ten working days, of unpaid leave per school year for preparing for and taking exams.
- Students are entitled to a one-time paid leave of 30 working days for the preparation and taking of a matriculation or state exam, including the preparation and defence of a thesis, diploma project or dissertation. In addition, the employee is entitled to four months of unpaid leave or, if the employer has not granted their consent, two months of unpaid leave.
- Leave for entrance exams – employees are entitled to six working days for applying to a secondary school or 12 working days for applying to a higher

education institution or doctoral studies, provided the employer grants consent. If consent is not granted, the employee is entitled to unpaid leave for these periods, reduced by half.

- Carer's leave – employees are entitled to carer's leave to look after or urgently accompany a child (up to 60 calendar days) or a sick family member over the age of 18 years (up to ten days) for medical examination, research, or treatment, either in the country or abroad.
- Maternity leave – female employees are entitled to 410 calendar days of maternity leave per child. During this period, they will receive a cash benefit amounting to 90% of their average gross daily labour remuneration.
- Shared maternity leave – with the consent of the mother, after the child reaches six months of age, the father or one of the child's grandparents may take shared maternity leave for the remainder of the 410-day period. This leave is compensated at 90% of the employee's average gross daily labour remuneration.
- Adoption leave – employees adopting a child up to five years old are entitled to 365 days of adoption leave. This leave is compensated by the National Social Security Institute at 90% of the employee's average gross daily labour remuneration.
- Shared adoption leave – in cases where a child is adopted by a married couple, with the adoptive mother's consent, the paid adoption leave may be transferred to the adoptive father or one of the adoptive parents' parents after six months from the child's arrival, but no later than the child's 5th birthday. The compensation during this leave is 90% of the employee's average gross daily labour remuneration.
- Paternity leave and paternity leave for adoptive fathers – eligible male employees and adoptive fathers will be entitled to 15 days in line with legislation. Paternity leave will be paid at a rate of 90% of the employee's average gross daily labour remuneration.
- Parental leave – after completing maternity leave, mothers and adoptive parents are entitled to parental leave until the child reaches the age of two. This leave can be transferred to the father, adoptive father, or one of the child's grandparents. The amount of allowance payable during this leave

is defined by the State Social Security Budget Act for the relevant year. For 2025, the amount of allowance payable for parental leave is BGN780 per month.

- Childcare leave of the father (adoptive father) – in case the father (adoptive father) has not used parental leave, he shall have a right to two months of childcare leave until the child reaches 8 years of age. Where the father (adoptive father) has used parental leave for a period shorter than two months, he shall be entitled to leave for the remaining duration, up to two months. The amount of allowance payable during this leave is defined by the State Social Security Budget Act for the relevant year. Currently, the amount of allowance payable for childcare leave of the father (adoptive father) is BGN780 per month.
- Unpaid childcare leave – parents are entitled to take unpaid childcare leave for up to six months to care for a child from their 2nd to their 8th birthday. This leave can be taken by either parent.

Confidentiality

Pursuant to the provisions of the Labour Code, employees shall not disclose any confidential information of the employer, they shall be loyal to the employer and not abuse the employer's trust, and shall protect the reputation of the employer. Any violation of these obligations shall constitute a breach of labour discipline, and the employer has the right to impose disciplinary actions, including dismissal.

Employee Financial Liability

Employees are financially liable for any harm caused to the employer due to negligence in or related to the performance of their job duties. Liability for harm caused intentionally, through a criminal offence, or unrelated to the performance of job duties shall be governed by civil law.

For any harm inflicted on the employer due to negligence in or related to the execution of job duties, the employee is liable to the extent of the damage, but not exceeding the agreed monthly salary. In cases where the harm is caused by a manager, the liability is limited to the extent of the harm, but cannot exceed three times the agreed monthly salary.

An employee assigned the responsibility of handling, storing, disbursing, or accounting for financial or physical assets shall be liable to the employer as follows:

- to the extent of the harm, but not exceeding three times the agreed monthly salary; and
- for any shortage, the employee is liable for the full amount, along with legal interest from the day the harm occurred, or if the date cannot be determined, from the day the shortage was discovered.

Employee Disciplinary Liability

A culpable failure to fulfil labour duties constitutes a breach of labour discipline. The respective employee may be subject to disciplinary actions (reprimand, warning of dismissal or dismissal) without prejudice to any financial, administrative, or criminal penalties that may apply.

2. Restrictive Covenants

2.1 Non-Competes

Any clauses in the employment contract that prevent employees from engaging in competitive activities for a specified period after the termination of their employment are considered null and void. Additionally, any clause that imposes civil liability on an employee for failing to comply with a requirement not to enter into employment or civil legal relations with a competitor of the company after the termination of the employment agreement is also null and void, as it contradicts the law.

2.2 Non-Solicits

The Commission for the Protection of Competition has clarified that “no-poach agreements” between employers or competitors in the labour market, made with the intent of preventing the recruitment or hiring of employees, can restrict competition by limiting companies’ ability to effectively recruit staff. As such, these agreements are considered anti-competitive and are prohibited.

Even in the absence of a no-poach agreement or non-solicitation clause, the act of soliciting employees from a competitor may, in some cases, be deemed

“unfair competition”. In such instances, an employer can bring a case before the Commission for the Protection of Competition against the former employee if they violate competition laws or assist others in doing so, as well as against the relevant company. Possible actions include the following.

- Any action or inaction in the course of economic activity that contradicts good commercial practices and causes harm, or may harm, the interests of competitors. For instance, the use of resources and clients in a manner contrary to good commercial practice may be considered a violation, though there must be substantiated evidence to support such claims.
- The use of a company name, brand, or geographical indication that is identical or similar to that of another, in a way that could harm the interests of competitors. If the similarity between company names or brands is high enough to cause confusion among the public, leading them to believe they are dealing with a particular company, this may constitute unfair competition.
- Unfair competition aimed at attracting customers in a way that results in the termination or violation of existing contracts, or the cancellation of potential contracts with a specific competitor. This can involve unscrupulous actions designed to encourage customers to break their contractual relationships or cancel agreements, leading to the company benefiting from these customers by securing contracts of its own.
- The knowledge, use, or disclosure of production or trade secrets in a manner that contravenes good commercial practice, including instances where such secrets are disclosed with the understanding that they will not be used or shared.

3. Data Privacy

3.1 Data Privacy Law and Employment

The Personal Data Protection Act governs social relations in connection with the protection of natural persons with regard to the processing of their personal data, to the extent that the relations are not regulated under Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the pro-

tection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119/1 of 4 May 2016).

The employer collects and processes employees' personal data in relation to the conclusion, performance, modification, and termination of employment contracts. This includes preparing additional agreements, termination orders, documents evidencing length of service, employment certificates, maintaining employment records, accounting for labour remuneration, calculating relevant tax and social security deductions, managing distrains on employment remuneration, and processing leave entitlements in accordance with the Labour Code. It also includes activities related to recruitment and selection in the case of termination of employment relations, among others.

The employer shall collect and process employees' personal data on a lawful basis, to the extent necessary to fulfil its obligations. Processing is considered lawful when it is necessary for the performance of employment relations under the employment contract, or when it is required to comply with the employer's legal obligations under applicable legislation. It can also occur with the employee's consent or when processing is necessary to pursue the legitimate interests of the employer.

The employer is required to implement appropriate technical and organisational measures to ensure, and to be able to demonstrate, that personal data processing is carried out in accordance with data protection legislation.

Employees' personal data shall be retained by employers for the duration required by applicable law. Additionally, any employer acting as a data controller must determine a storage period for personal data of applicants involved in recruitment procedures, which may not exceed six months unless the applicant has consented to a longer storage period. After this period, the employer must erase or destroy the documents containing personal data, unless otherwise required by specific law.

4. Foreign Workers

4.1 Limitations on Foreign Workers

Citizens of the EU, the countries that are parties to the European Economic Area (EEA) agreement, and the Swiss Confederation, as well as their family members, can enter and leave the Republic of Bulgaria using their identity cards or passports. They are permitted to stay freely for up to three months. After this period, they must register in order to obtain a certificate of temporary residence. EU, EEA, and Swiss Confederation citizens do not require a work permit to work in Bulgaria.

Workers who are citizens of a third country ("Foreign Worker(s)") may be granted access to the labour market when applying for positions that do not require Bulgarian nationality, under the following conditions.

- The total number of Foreign Workers, who have worked for a local employer in the preceding 12 months, does not exceed 20% of the average workforce employed on contracts during that time, or 35% for small or medium-sized businesses.
- The working conditions and compensation for Foreign Workers must be no less favourable than those for Bulgarian nationals in the same category of work.
- The Foreign Worker must possess the specialised knowledge, skills, and professional experience required for the relevant position.

A Foreign Worker shall be allowed access to the labour market provided that they:

- have an employment contract with a local employer;
- are seconded to Bulgaria within the framework of providing services;
- are reassigned for intra-corporate transfer purposes; or
- work as a freelance professional.

In some cases, the Ministry of Internal Affairs issues the work permit after receiving a positive opinion from the Executive Director of the Employment Agency regarding access to the labour market. This applies to permits such as the Single Residence and Work Per-

mit, the EU Blue Card (for highly skilled employment), the Seasonal Worker Permit, and the Intra-corporate Transfer Permit. In other cases, the work permit is issued by the Executive Director of the Employment Agency, and a residence permit is then granted by the Ministry of Internal Affairs based on the work permit (for example, for seconded Foreign Workers, freelance activities, or for the family members of Foreign Workers who already hold a residence permit).

Foreign Workers who have legal access to the labour market may be employed under an employment contract or may work as seconded or posted workers within the framework of providing services in Bulgaria. However, they can only work for the local employer or entity providing work to seconded or posted workers, and only in the positions, places of work, and terms of employment specified in the permit granted by the competent authorities.

4.2 Registration Requirements for Foreign Workers

The Employment Agency registers Foreign Workers for:

- employment of persons of Bulgarian origin;
- secondment within the scope of providing services on the territory of the Republic of Bulgaria for a period of up to three months, six months, or up to 12 months;
- seasonal employment up to 90 days;
- employment of scientific workers for the purposes of conducting a scientific research project;
- employment of full-time students in higher education institutions in the Republic of Bulgaria; and
- employment of interns under an employment contract with an internship condition.

Employers shall declare the employment of Foreign Workers who reside on the territory of the Republic of Bulgaria as family members of:

- foreigners with permitted long-term or permanent residence in the Republic of Bulgaria;
- Bulgarian citizens, citizens of a member state of the European Union, of a state party to the Agreement on the European Economic Area, or of the Swiss Confederation, who by virtue of international

treaties with the European Union have the right to free movement;

- foreigners enjoying rights under the Asylum and Refugees Act;
- third-country nationals to whom expulsion orders have been issued and the expulsion has not taken place after one year from the issuance of the order; and
- third-country nationals who are victims of human trafficking and have special protection status under the Anti-Trafficking in Human Beings Act.

The employer is required to notify the relevant territorial directorate of the Labour Inspectorate within seven days of the actual commencement of work of the respective Foreign Worker.

5. New Work

5.1 Mobile Work

Bulgarian legislation does not include specific regulations regarding mobile work. The ability to perform work from various locations without prior approval from the employer is only available to contractors under service agreements.

However, amendments to the legislation, effective from 1 April 2024, have addressed remote work. These amendments allow employees to work from more than one location outside the employer's premises, as long as the locations are specified in the employment contract. The employer may change the employee's place of work for up to 30 working days per year, based on a written request from the employee, and subject to the conditions and procedures outlined in the employment contract and/or internal employer policies.

Employees are required to comply with the minimum daily and weekly rest periods and are not obligated to respond to communications initiated by the employer during these rest periods, unless such conditions are expressly agreed in the individual employment contract and/or collective agreement.

The procedure for assigning and reporting remote work should be outlined in the individual employment

contract, the collective labour agreement, and the employer's internal policies.

The employer is responsible for providing, at its own expense, the necessary equipment and software to facilitate remote work, including devices for communication with remote employees (such as internet connectivity), data protection measures, and information about minimum safety and health requirements for the workplace where remote work is performed. The employer must also provide guidance on working with the equipment, maintaining it, and complying with legal requirements and rules. Additionally, the employer should establish a monitoring system and other technical or documentary aids as specified in the individual contract and/or collective labour agreement.

Employees who perform remote work must provide written information to the employer about the characteristics of their remote workplace and adhere to the employer's health and safety regulations, as well as company policies.

The employer is required to inform the employee in writing, in advance, about the responsibilities and potential sanctions for non-compliance with the established rules and requirements, including those related to the protection of company data.

5.2 Sabbaticals

An employee may be granted paid or unpaid sabbatical leave in accordance with the terms and procedures established in a collective agreement or through an agreement between the parties to the employment relationship. The period of unpaid sabbatical leave will count towards the employee's length of service.

5.3 Other New Manifestations

In recent years, particularly following the COVID-19 crisis, many employers have opted not to invest in office premises, instead offering more flexibility to employees through hybrid work models. This has led to the rise of desk sharing, where employees do not have fixed workspaces but instead use any available space when in the office.

Another emerging trend, though not legally regulated, is the use of co-working spaces or office-sharing arrangements, particularly by employers with fewer than ten employees. These arrangements may raise concerns related to health and safety regulations. To address this, employers should ensure that relevant clauses regarding health and safety are included in their agreements with landlords or other employers.

6. Collective Relations

6.1 Unions

Employees have the right, without prior permission, to freely form trade union organisations of their own choosing, as well as to join and leave them on a voluntary basis.

Trade union organisations represent and protect employees' interests before state bodies and employers, particularly in matters related to industrial relations, social security, and living standards. They achieve this through collective bargaining, participation in tripartite co-operation, the organisation of strikes, and other legal actions.

The bodies of trade union organisations within the employer's organisation have the right to participate in the drafting of all internal rules and regulations related to industrial relations. The employer is required to invite them to participate in this process.

Trade union organisations and their branches are entitled, at the request of employees, to represent them as authorised representatives before the court.

6.2 Employee Representative Bodies

The general meeting of employees shall consist of all employees of the employer. It can be convened by the employer, by the leadership of the trade union organisation, or on the initiative of one-tenth of the employees. The general meeting will make decisions by a simple majority of the employees present, unless otherwise stipulated by the Labour Code, another law, or the organisation's statute.

At a general meeting, employees may elect representatives to represent their collective interests on

issues related to industrial relations and social security, both before the employer and state bodies. These representatives shall be elected by a majority of more than two-thirds of the members present at the general meeting.

In companies with at least 50 employees, or in organisationally and economically self-contained divisions of the employer with at least 20 employees, the general meeting shall elect employees' representatives from among its members. These representatives are responsible for exercising the right to information and consultation. They will also take part in concluding an agreement that defines the content of the information to be provided, the timing for its delivery to the representatives, the time frame for receiving their opinion, and the subject of consultation. Additionally, the agreement will outline the employer's designated representatives responsible for informing and consulting the employee representatives.

The number of the employees' representatives shall be determined in advance by the general meeting, as follows:

- applicable to companies with 50 to 250 employees – not fewer than three and not more than five;
- applicable to companies with more than 250 employees – not fewer than five and not more than nine; and
- applicable to organisationally and economically self-contained divisions – not fewer than one and not more than three.

The employees' representatives shall be elected for a term of one to three years.

The employees' representatives shall have the right to:

- be informed by the employer in a manner enabling them to assess the possible impact of the measures envisaged by the competent authorities;
- require that the employer provide them with the necessary information, if this has not been done within the established time limits;
- participate in consultation procedures with the employer and to express their opinion on the measures envisaged by the competent authorities,

which shall be taken into account during the decision-making process;

- meet with the employer in cases where they have to inform the employer of the questions raised by the employees;
- have access to all workplaces in the enterprise or division; and
- be enrolled in training necessary for the performance of the functions thereof.

6.3 Collective Bargaining Agreements

The collective agreement governs issues related to the industrial and social-security relations of employees that are not addressed by mandatory legal provisions. It cannot include clauses that are less favourable to employees than those provided by the law or a collective agreement that is binding on the employer.

A collective agreement can be concluded at the employer, branch, industry, or municipal level. Within a company, it is typically concluded between the employer and a trade union organisation. At the industry or branch level, the agreement is concluded between the relevant representative organisations of employees and employers. In municipalities, collective agreements for activities funded by the municipal budget are concluded between the representative organisations of employees and employers.

The collective agreement must be made in writing and registered with the relevant Labour Inspectorate. It will apply to employees who are members of the trade union organisation party to the agreement.

The employer is required to inform all employees of the collective agreements concluded at the enterprise, industry, branch, or municipal level that bind the employer, and to ensure that the texts of these agreements are available for employees to review.

Any party to the collective agreement, or any employee to whom the agreement applies, has the right to take legal action before the court to request the declaration of nullity of the collective agreement or any of its individual clauses, if such clauses are in conflict with or circumvent the law. Legal action may also be taken in the event of non-performance of obligations under the collective agreement.

7. Termination

7.1 Grounds for Termination

Termination During the Probation Period

During the probation period, the party for whose benefit it has been agreed may terminate the employment contract without notice and without providing any reasons.

Termination by Both Parties Without Notice

An employment contract shall be terminated without either party being obligated to give notice to the other party:

- by mutual consent in writing between the parties – the party receiving the offer must respond within seven days of receiving it;
- upon expiry of the agreed term;
- upon completion of the specified work;
- upon the return of the employee who was replaced;
- if the employee is unable to perform the assigned work due to illness, resulting in permanently reduced working capacity, or due to health contraindications as confirmed by a medical expert board's conclusion – in such cases, termination is not permissible if the employer can offer alternative work suitable for the employee's health condition and the employee agrees to take it;
- if the dismissal of an employee is declared wrongful, or if the employee is reinstated to their previous position by the court but fails to report to work within the specified timeframe; and
- in other specific cases provided for in the Labour Code.

Termination by the Employee Without Notice

An employee may terminate the employment contract in writing without notice, where:

- if the employer discontinues its operations, or places the employee on unpaid leave without their consent;
- if the employer delays payment of wages or benefits under the Labour Code or social insurance, or unlawfully changes the nature or place of work or the agreed remuneration, or fails to fulfil other obligations set out in the employment contract, collective agreement, or by law;

- if the employer's actions result in a substantial deterioration of working conditions due to a change of employer, the employee is entitled to compensation equivalent to the gross salary for the notice period in the case of an indefinite contract, or to the actual detriment incurred in the case of a fixed-term contract;
- if the employee is unable to perform the work due to illness and the employer fails to provide suitable alternative work in line with the health authorities' prescriptions; and
- in other specific cases provided for in the Labour Code.

Termination by the Employee With Notice

The employee may terminate the employment contract by giving the employer written notice without a reason.

See 7.3 Dismissal for (Serious) Cause regarding terminations by the employer with notice in specific cases, and termination by the employer without notice.

Termination at Employer's Initiative in Exchange for Compensation

The employer, at its own initiative, may offer the employee termination of the employment contract in exchange for compensation.

If the employee accepts the offer, the employer is obliged to provide compensation amounting to at least four times the gross monthly labour remuneration last received, unless the parties have agreed to a higher compensation amount.

Collective Dismissals

Under the Labour Code, collective dismissals are those carried out by the employer for one or more reasons not related to the individual employee, where the number of dismissals within a 30-day period meets the following criteria:

- at least ten dismissals in companies employing more than 20 but fewer than 100 employees;
- at least 10% of the total workforce in companies employing at least 100 but fewer than 300 employees; and

- at least 30 dismissals in companies employing 300 employees or more.

When the employer plans to carry out collective redundancies, it must begin consultations with the employees' representatives and trade union organisations in a timely manner, but no later than 45 days before the redundancies are to be carried out. The employer must provide full information about the upcoming redundancies in accordance with the Labour Code, and the aim is to reach an agreement with the employees' representatives to avoid or limit the collective redundancies and mitigate their impact.

After providing the necessary information to the representatives, the employer is required to send a copy of it to the relevant division of the employment agency within three working days. The collective dismissals may only take place no earlier than 30 days after the notification to the employment agency, irrespective of the notice periods.

7.2 Notice Periods

The notice period for the termination of an indefinite employment contract is 30 days, unless the parties have agreed on a longer period, not exceeding three months. For a fixed-term employment contract, the notice period is three months, but it shall not exceed the remaining term of the contract.

The termination notice may be withdrawn if the employee communicates this intention before or at the same time as the notice is received. Additionally, with the employer's consent, the notice may be withdrawn before the notice period expires.

Either party – whether the one giving the notice or the one receiving it – may terminate the employment before the end of the notice period. In such cases, the terminating party must compensate the other party with the compensation amounting to the employee's gross remuneration for the unfulfilled notice period.

7.3 Dismissal for (Serious) Cause Termination by the Employer With Notice

The employer may terminate the employment contract by giving the employee written notice, observing the notice period in the following cases:

- the closure of the enterprise;
- the closure of part of the enterprise or downsizing of personnel;
- a reduction in the volume of work;
- employee idling for more than 15 working days;
- the employee's inability to perform the work efficiently;
- the employee does not possess the necessary educational qualifications or professional skills for the work;
- the employee refuses to follow the enterprise or division of it in the event of relocation outside of the current work location;
- the position held by the employee must be vacated for the reinstatement of a wrongfully dismissed employee;
- the employee becomes entitled to a pension or if the employment began after the employee has acquired and exercised the right to a pension;
- there is a change in the requirements for performing the position, and the employee does not meet these new requirements; or
- the performance of the employment contract becomes objectively impossible.

Compensation Due by the Employer

In cases of dismissal due to the closure of the enterprise or part of it, downsizing of personnel, reduction in the volume of work, idling for more than 15 working days, refusal by the employee to follow the enterprise or a division thereof in case of relocation, or when the position occupied by the employee must be vacated for the reinstatement of a wrongfully dismissed employee, the employee is entitled to compensation. This compensation is equivalent to the employee's gross remuneration for the period of unemployment, but it shall not exceed one month's salary. If the employee begins new work at a lower remuneration during this period, they shall be entitled to the difference in pay for up to one month as of termination.

Selection Process

In the event of the closure of part of an enterprise, as well as during downsizing of personnel or a reduction in the volume of work, the employer has the right to select which employees to retain. Acting in the best interests of the production or service, the employer may dismiss employees whose positions are not

being downsized in order to retain those with higher qualifications or superior performance.

Termination by the Employer Without Notice

An employer may terminate an employment contract without notice if the employee has been detained for the execution of a sentence. The employer must also terminate the contract without notice in the following situations.

- The employee has been disqualified, either by a sentence or through an administrative procedure, from practising the profession or occupying the position.
- The employee refuses to accept suitable work offered as part of occupational rehabilitation.
- The employee is dismissed due to a breach of discipline.
- The employee fails to notify the employer of any incompatibility with the position they hold.
- Incompatibility exists with the position as defined by the Labour Code.
- Other specific conditions as outlined in the Labour Code.

Procedure in Case of a Disciplinary Dismissal

A disciplinary dismissal may be imposed if any of the following occur.

- The employee reports for work late or leaves early on three occasions, each lasting at least one hour, within a single calendar month.
- The employee is absent from work for two consecutive working days.
- There are repeated breaches of work discipline.
- The employee abuses the employer's trust or discloses confidential information.
- The employee causes harm to citizens in the trade or services sector.
- The employee participates in gambling activities using the company's telecommunication facilities.
- Other serious breaches of work discipline.

A disciplinary dismissal shall be imposed in compliance with the criteria for determining the disciplinary sanction, namely the gravity of the breach, the respective circumstances, as well as the conduct of the employee.

Before any disciplinary sanction, including dismissal, is imposed, the employer must request an explanation from the employee and gather evidence. Disciplinary sanctions, including dismissal, must be implemented through a reasoned written order. These sanctions must be imposed within two months after detecting the breach and no later than one year after it was committed.

Upon disciplinary dismissal, the employee shall owe the employer compensation amounting to the employee's gross labour remuneration for the notice period in case of an indefinite employment contract; and amounting to the actual detriment in case of a fixed-term employment contract.

7.4 Termination Agreements

The termination of the employment contract must be made in writing. A termination agreement may be signed in the case of termination by mutual consent or when the employer initiates termination, accompanied by agreed compensation.

In all other cases, the employer shall issue a termination order or order of dismissal, specifying the grounds for termination and any compensation owed to the employee, such as compensation for unused paid leave or a non-observed notice period.

7.5 Protected Categories of Employee

In the event of the closure of part of an enterprise, downsizing of personnel, reduction in the volume of work, where the employee lacks the capacity to perform the work efficiently, or when there is a change in the requirements for the position that the employee fails to meet, or in cases of disciplinary dismissal, the employer must obtain advance permission from the Labour Inspectorate for each specific case in order to dismiss the following categories of employees:

- female employees who are the mother of a child under three years old;
- employees undergoing occupational rehabilitation or those suffering from specific diseases, after obtaining an opinion from the territorial Medical Expert Board;
- employees who have commenced the use of permitted leave;

- employees elected as representatives of the workforce or health and safety representatives at work, for as long as they hold such positions;
- employees who are members of a special negotiating body or certain European organisations, for the duration of their performance of relevant functions; and
- employees who are members of trade union leadership, during their tenure in such a position and for six months thereafter, but only with the prior consent of the trade union body designated by the decision of the central leadership of the trade union organisation.

A pregnant female employee or a female employee undergoing advanced stages of in vitro treatment may only be dismissed with notice in very limited circumstances, as specified in the Labour Code.

An employee on maternity leave may only be dismissed if the enterprise is being closed.

These protections apply at the time the dismissal order is served.

8. Disputes

8.1 Wrongful Dismissal

The employee has the right to challenge the legality of their dismissal either before the employer or in court, and to seek the following remedies:

- the dismissal to be declared wrongful and revoked;
- reinstatement to their previous position;
- compensation for the period of unemployment resulting from the dismissal; and
- modification of the grounds for dismissal.

The employer, acting unilaterally, may revoke the dismissal order before the employee files a legal action in court. Labour disputes concerning wrongful dismissal will be reviewed by the regional court within three months of receiving the statement of action, and by the district court within one month of receiving the appeal.

If the employer or court orders the reinstatement of the employee, the employee may return to their previous position by reporting to work within two weeks of receiving the reinstatement communication, unless the time limit is exceeded for valid reasons.

If the dismissal is found to be wrongful by the employer or court, or if the grounds for termination are corrected, the change must be recorded in the employee's labour book or, after 1 June 2025, in their electronic labour record.

In the case of wrongful dismissal, the employee is entitled to compensation from the employer. This compensation will be equal to the employee's gross labour remuneration for the period of unemployment caused by the dismissal, but not exceeding six months. If, during this period, the employee has worked in a lower-paid job, they are entitled to the difference in wages.

8.2 Anti-Discrimination

The employer shall ensure:

- equal remuneration for equal or equivalent work;
- equal opportunities for training and professional growth and promotion;
- equal criteria in imposing disciplinary sanctions and termination of employment contracts;
- effective measures to prevent any form of discrimination in the workplace in co-operation with the trade unions; and
- that the workplace is adapted to the needs of persons with disabilities.

In the event of failure to fulfil its obligations, the employer shall bear liability for acts of discrimination committed at the workplace, including by its employees.

Anti-discrimination claims may be brought before the Commission for Protection of Discrimination or before the regional court.

The Commission for Protection of Discrimination may impose sanctions amounting from BGN250 to BGN2,000 (in case of a legal entity, the pecuniary

sanction may be from BGN250 to BGN2,500), and administrative coercive measures.

The regional court may order the employer to cease the discriminatory act, restore the situation to its state prior to the violation, refrain from further violations, and pay liquidated damages to the claimant.

In a discrimination proceeding, if the claimant presents facts suggesting discrimination, the burden of proof falls on the employer to demonstrate that the right to equal treatment has not been violated.

8.3 Digitalisation

Courts shall accept procedural actions in electronic form and are required to accept electronic statements through which procedural actions are carried out, provided that the requirements of Regulation (EU) No 910/2014 and the Law on Electronic Documents and Electronic Authentication Services are met. The statements must be signed with a qualified electronic signature when the law requires a handwritten signature for the validity of certain statements.

Participation of the Parties by Videoconference

Any party may request to participate in a court hearing via videoconference if they are unable to appear in person.

The court will determine the date and time for the hearing where videoconferencing will be used, after confirming the possibility of holding the hearing with the nearest regional court, located at the party's place of residence, the witness's or expert's location, or the place of detention or deprivation of freedom where the person is being held.

During the videoconference, the party must be present in a room specifically equipped for videoconferencing at the designated, approved location.

9. Dispute Resolution

9.1 Litigation

Labour disputes are disputes between an employee and an employer regarding the formation, existence, implementation, and termination of employment rela-

tionships, as well as disputes between the employees' representative and the employer. These also include disputes over the performance of collective agreements, the determination of length of employment service, and disputes between employees and enterprises providing temporary work.

Labour disputes are to be settled by the courts (see **9.3 Costs**) through an accelerated court procedure, and must be initiated within the prescription periods outlined in the Labour Code.

A class action may be brought on behalf of individuals harmed by the same infringement where, due to the nature of the infringement, the exact circle of affected persons cannot be precisely defined, but is identifiable.

In cases of non-performance of obligations under a collective agreement, legal actions may be brought before the court by the parties to the agreement, as well as by any employee to whom the agreement applies.

Collective labour disputes should be resolved through direct negotiations between employees and employers or their representatives, according to a procedure they freely determine. Regarding situations where no agreement is reached, see **9.2 Alternative Dispute Resolution**.

9.2 Alternative Dispute Resolution

Except for collective labour disputes, all labour disputes shall be settled by the courts in accordance with the procedure established by the Civil Procedure Code, unless otherwise specified by the Labour Code.

Collective labour disputes may be resolved through the National Institute for Reconciliation and Arbitration, which assists in the voluntary settlement of disputes between employees and employers. The National Institute for Reconciliation and Arbitration is not an arbitration court, but rather a corporate body under the Minister of Labour and Social Policy, headquartered in Sofia, and operating as an executive agency. A collective labour dispute may be referred for settlement to a sole arbitrator or an arbitration

commission, provided there is a written agreement between the parties.

9.3 Costs

When a court case is initiated, state fees shall be collected based on the cost of the claim and the costs of the proceedings, including remuneration for experts, witnesses, and attorneys' fees.

The claimant's fees, costs, and attorney's fees, if applicable, shall be paid by the defendant in proportion to the portion of the claim that is awarded. The defendant is also entitled to request payment of the costs incurred by them in proportion to the portion of the claim that is rejected.

However, fees and expenses for the proceedings are not to be paid by claimants who are workers or employees in cases arising from employment relationships.

Trends and Developments

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Penkova & Partners Law Firm was founded in 2000, and maintains its focus on business law and strong, long-term relationships with its clients and partners. Penkova & Partners Law Firm renders legal consultancy in the fields of commercial and corporate law, employment, construction, real estate and dispute resolution. The team is located in Sofia and comprises six lawyers, three paralegals and two external

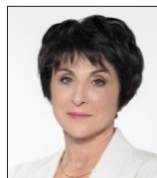
legal consultants. The team is noted for its in-depth knowledge of applicable legislation, individual approach, effective legal solutions, loyalty and commitment to clients' needs. Penkova & Partners Law Firm is a member of Legal Netlink Alliance (LNA), a global network of carefully selected law firms which ensures its clients access to high-quality legal representation in different jurisdictions.

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The Labour Market in Bulgaria in 2025

The labour market in Bulgaria in 2025 continues to transform under the influence of several key factors – digitalisation, new work models, and changing employee expectations.

Remote work has seen a significant decline in the past year, with more and more employers returning their employees to the office or implementing a so-called hybrid work regime, with 1–2 working days of remote work per week.

As businesses strive to increase productivity, streamline operations, and gain competitive advantages, the implementation of artificial intelligence is becoming increasingly important for future success.

In the coming years, employment is expected to continue to grow, albeit at a slower pace than in the previous three years. In the coming years, employment growth will mainly occur by attracting some of the inactive individuals back into the workforce or by attracting employees from other countries.

In the first quarter of 2025 the number of employed persons aged 15 and over, according to data from the National Statistical Institute (NSI), is 2,910,900. The employment rate for the age group 20–64 is 76.5%.

In the first quarter of 2025, the number of unemployed was 116,700, and the unemployment rate during the first quarter of 2025 reached 3.9%.

Although employers declare a serious shortage of employees, the remaining unemployed have difficulty finding employment – usually due to a mismatch between their skills and market requirements or due to limited opportunities in their region.

The strategic objectives of the government in 2025 in the field of the labour market include:

- increasing employment and reducing the unemployment rate among disadvantaged groups in the labour market;
- increasing the supply of labour by activating inactive and disadvantaged groups in the labour market;

- increasing the quality of the workforce according to job requirements based on forecasts for the demand for labour with certain skills, digitalisation and new technologies; and
- increasing employment opportunities in economically less developed regions.

The strategic objective of the government in the field of free movement of workers and labour migration is to limit the shortage of personnel for the labour market in Bulgaria, by regulating labour migration, as well as by guaranteeing the rights of Bulgarian workers exercising their right to free movement and employment in the EU/EEA.

As of 1 January 2025 the minimum monthly wage is BGN1,077 which is expected to be increased as of January 2026.

The maximum monthly social security income as of 1 April 2025 is BGN4,130. The maximum monthly social security income for 2026 will be adopted in the last quarter of 2025.

The most significant changes of the labour legislation in 2025 were related to the digitalisation of the labour book and the adoption of the euro as of 1 January 2026.

Recent legislative changes

The essential laws regulating the employment relations between the workers and employees and the employer are:

- the Labour Code;
- the Social Security Code;
- Health and Safety at Work Act;
- Employment Promotion Act;
- Labour Migration and Labour Mobility Act;
- the Ordinance on the working time, rests and leaves;
- Ordinance on the structure and organisation of the labour salary; and
- other statutory acts,

which supplement the provisions of the Labour Code.

Employment register and unified electronic employment record

In September 2023 significant amendments were adopted in the Labour Code, effective as of 1 June 2025, by virtue of which the employee labour book has been replaced with the Employment Register maintained by the National Revenue Agency which contains the unified electronic employment records of the employees. The unified electronic employment record is an electronic document that contains data and circumstances related to the labour activity of the employee, and is an official identification document.

The employee has the right of access to his/her unified electronic employment record, as well as the right of receiving information about the access history, which contains data, at least, about the employer, the state authority or the third party who made the access.

Employers have the right to information about their employed employees, entered by previous employers, with the exception of the amount of the wages and benefits that the worker or employee received from previous employers.

The unified electronic employment record can be used to certify the existence of work experience, when such is required in a competition for holding a position, after obtaining consent from the candidate, as described in the applicable legislation.

The unified electronic employment record contains data on:

- the names of the employee;
- the personal identifier of the employee;
- the employer's identifier and name;
- the basis of the employment contract;
- the date of conclusion of the employment contract and the beginning of its implementation;
- the term of the contract, when such is agreed;
- the date of conclusion of additional agreements;
- the date and reason for termination of the employment relationship;
- the amount of the base salary;
- the code of the position held according to the National Classification of Professions and Positions;

- the code of the main economic activity in which the person is employed, according to the Classification of economic activities approved by the National Statistical Institute;
- the code of the place of residence of the worker or employee according to the Unified Classifier of Administrative-Territorial and Territorial Units;
- the duration of working hours;
- the duration of the time that is recognised as work experience, as well as the time that is not recognised as work experience;
- compensation paid upon termination of the employment relationship;
- distraint notices provided for in the Civil Procedure Code;
- the agreed paid annual leave; and
- the days of used paid annual leave due for the year of termination of the employment relationship.

The employer shall accurately and promptly enter in the unified electronic employment record the required data and the changes that have occurred in them.

Adoption of the euro as the official currency in Bulgaria

The Act for Introduction of the Euro in the Republic of Bulgaria has been promulgated, by virtue of which the date of introduction of the euro in the Republic of Bulgaria is the date specified in the Decision of the Council of the European Union on the adoption of the euro by the Republic of Bulgaria – 1 January 2026.

Pursuant to the Act for Introduction of the euro in the Republic of Bulgaria, the conversion of due amounts from BGN to EUR (after the introduction of the euro) shall be done automatically even if the respective document still specifies the amount in BGN. The conversion rate shall be in accordance with the already determined fixing of BGN1.95583 for EUR1. There is a specific rule for conversion of labour remunerations, compensations, social support and pensions, pursuant to which the formed amount (calculated with five digits after the decimal point) shall be rounded up to the second digit after the decimal point. In case the third digit after the decimal point is greater than zero, the second digit after the decimal point shall be increased by one. As of 1 January 2026, labour remuneration, benefits, cash and social benefits, and

pensions shall be paid in euros and shall be recalculated in accordance with the rule under the preceding sentence. That rule also applies to labour remuneration, compensation, cash and social benefits, and pensions, which are determined in levs, but have not been paid by 1 January 2026.

Employment agreements and any employment-related documents prepared and concluded after 1 January 2026 shall include labour remuneration calculated in euros.

Changes in the Labour Migration and Labour Mobility Act and the Regulations for its implementation

The changes provide that in all cases of change of the employer by an EU Blue Card holder, the new employer or its representative shall submit the application for change of employment. When the change of employer is carried out after the first 12 months of employment on the grounds of the issued EU Blue Card, the applicable procedure is significantly simplified, requiring submission by the new employer of a certified copy of the employment agreement and declaration from the new employer that the conditions for work and labour remuneration are fulfilled and that those are not inferior to the ones of Bulgarian employees in the same labour category. If in such case the new employer is in the same industry sector, the required documents are certified by the new employer – a copy of the employment agreement and document ascertaining that the conditions of performance of a profession, included in the List of Regulated Professions in the Republic of Bulgaria under Article 3 of the Recognition of Professional Qualifications Act.

Applicants for EU Blue Cards are not required to be out of Bulgaria when they are subject to application for an EU Blue Card. In case applicants for EU Blue Cards are already holders of a prolonged residence permit on other grounds, the application has to be submitted at least two months before expiration of the term of the previous prolonged residence permit. In case the applicant does not comply with this term, he or she is subject to administrative penalty from BGN100 to BGN500 and from BGN200 to BGN1,000 in case of repeated violation. Employers are subject to pecuni-

ary sanctions from BGN200 to BGN1,000 and from BGN400 to BGN2,000 in case of repeated violation.

With the changes in the Foreigners in the Republic of Bulgaria Act and the Labour Mobility and Labour Migration Act, if the applicant is in the IT field, he or she is required to establish, via official documents, professional experience, relevant to the position under the employment agreement, which requires higher education of at least three years in the seven years prior to applying for an EU Blue Card. The position under the employment agreement is required to be in group 133 “Managers in the field of IT”, subclass 25 “IT Specialists” as per the National Classifier of Professional Positions. In case the applicant is not in the IT field, he or she is required to prove via an official document at least five years of professional experience, which requires higher education and is relevant to the position under the employment agreement.

As per the latest changes in the Foreigners in the Republic of Bulgaria Act, in force as of 1 July 2025, a new ground for granting of a permit for prolonged residence has been introduced for individuals referred to as “digital nomads”.

A digital nomad is a foreigner who:

- is employed under an employment contract by an employer registered/established outside a member state of the European Union, or a state that is party to the Agreement on the European Economic Area, or the Swiss Confederation, and who provides remote services through the use of information technology – in case the employment contract is concluded for a fixed term, the remaining term of the contract must be no less than the term of validity of the long-term residence permit issued on this basis;
- is a legal representative, member of the management body, owner of a company, partner or shareholder owning more than 25% of the capital of a company registered/established outside a member state of the European Union, or a state that is party to the Agreement on the European Economic Area, or the Swiss Confederation, through which it provides remote services through the use of information technologies and does not perform work and/

or provide services to persons on the territory of the Republic of Bulgaria; or

- provides remote services in a personal capacity through the use of information technologies for a period of no less than one year prior to the date of submission of the application and does not perform work and/or provide services to persons on the territory of the Republic of Bulgaria and/or does not carry out freelance activities on the territory of the Republic of Bulgaria.

In all cases the digital nomad has to prove average yearly income of at least 50 times the statutory monthly minimum wage in Bulgaria (approximately EUR27,500) as per the Bulgarian legislation of working salaries. The permit is issued for a term of one year and can be renewed for another.

Other trends and developments

In order to ensure more efficient work-life balance and to encourage and motivate their employees, employers have established different measures and benefits, such as:

- four-day working week or additional days off or working less hours on Fridays – these measures are not legally regulated and they are provided at the expense of the employer as paid days off;
- increase of employee engagement and better allocation of time between personal and professional life;
- recognition of the efforts and results achieved by employees by providing financial incentives;
- provision of additional health insurance to employees as well as family members;

- insurance of the employees at the expense of the employer in an additional voluntary pension fund;
- provision of food vouchers to employees and sports cards;
- provision of transport or transport expenses or parking spaces for the employees;
- efficient onboarding process;
- training and additional qualifications at the expense of the employer;
- community days;
- referral programmes;
- transparent communication and feedback policy of the employer;
- improvement of mental health policy;
- option equity schemes, where the employer is part of an international group of companies; and
- internal promotions within the company.

The above specified list of measures and benefits is not exhaustive. The successful employers nowadays understand and acknowledge that the company performance depends on the engagement, motivation and focus of their employees and the alignment between individual goals and the overall corporate strategy, as well as on the understanding of each employee about how his/her efforts contribute to the company's success. It is imperative that companies appreciate that good employees – relied upon to keep the company running effectively – will only be kept if they are satisfied with their employer. Employment is a two-way contract, and a lack of professional and/or financial satisfaction leads to increased employee turnover.



Law and Practice

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Fasken has one of Canada's largest national practices, comprising more than 120 lawyers, and offices in each of the major cities across the country – Vancouver, Calgary, Toronto, Ottawa, Montreal and Quebec City – and a growing practice with employment specialists in Johannesburg, South Africa, supported by a network of international contacts. Fasken lawyers advise on all areas of labour, employment, pensions and benefits, human rights, privacy and immigration.

Fasken has a long history of representing employers in all aspects of labour law. This service includes offering strategic and tactical advice as well as representing employers before arbitration boards, provincial labour boards, the Canada Industrial Relations Board, various other administrative tribunals and all levels of court in each of the provinces and countries in which the firm operates.

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1. Employment Terms

1.1 Employee Status

Canada is a federal jurisdiction in which the provinces have principal authority over labour and employment matters. However, the federal government has exclusive authority over labour and employment matters in certain important areas, including banking, the postal service, interprovincial transportation, telecommunications and various other sectors that make up part of Canada's national infrastructure.

Labour and employment legislation across Canada does not generally differentiate between blue- and white-collar workers. However, separate requirements or exemptions in respect of matters such as minimum wages, eligibility for overtime, and maximum hours of work are often established for different types of work, including in relation to specific industries or for specific types of employees.

By way of example, in most jurisdictions, supervisory and managerial personnel are exempt from the payment of overtime. Other groups are also excluded from overtime pay provisions in most jurisdictions, including professionals (lawyers, doctors, engineers, etc), domestic workers, teachers, police and IT professionals. Similarly, supervisory and managerial personnel and specified groups are also excluded from maximum hours of work provisions.

In addition, regulations in each jurisdiction establish exceptions to the maximum hours that can be worked in specific industries (eg, tourism).

1.2 Employment Contracts Definite and Indefinite Contracts

Contracts of employment may be for a definite or indefinite term.

Employees hired on a definite, or fixed-term, employment basis are hired for a specific period of time. In such employment relationships, there is no intent to create an ongoing employment relationship.

The requirement to provide notice of termination, discussed later in this section, may be avoided in certain circumstances by hiring on a definite-term basis if the term is well defined. An employee hired on a definite-term contract is entitled to be employed for the entire term of the contract unless the contract is terminated for cause or is rendered impossible to perform. As a result (and in the absence of an enforceable clause providing the option to terminate the contract early), if a definite-term employee's employment is terminated before the expiry of the term, the employee will likely be entitled to damages equivalent to the amount the employee was entitled to earn during the remainder of the contract.

By contrast, employees hired on an indefinite basis can generally only be terminated with reasonable

notice of termination – or pay in lieu thereof – where the termination is without just cause.

Courts in Canada have found that a series of definite-term contracts leads to a conclusion that the employment relationship has become indefinite. Accordingly, a series of renewals of definite-term contracts will likely be overlooked by courts and not relieve an employer's obligation to provide reasonable notice of termination.

Formal Requirements and Terms

Contracts of employment may be oral or written or a combination of both. Increasingly, employers enter into written employment contracts with non-unionised employees to set out the terms and conditions of the employment relationship. Written employment contracts are especially common between employers and senior, managerial or key employees and where employees are hired for a particular term or to perform a particular task.

There are no specific terms that must be included in a contract of employment. However, any terms set out in the contract must respect the minimum standards set out in the employment standards legislation that has been enacted in each Canadian jurisdiction. Employment standards legislation applies whether or not an employer and employee have set out the terms of their relationship in a contract. However, employment standards are only minimum standards; employers and employees are not prohibited from agreeing to greater rights or benefits in employment contracts.

Express terms set out in written employment contracts typically relate to salary, benefits, vacation entitlement, hours of work, title, job duties, and termination of employment.

Termination

Importantly, unlike the USA, Canada does not allow for “at will” employment. Unless there is an express term providing otherwise, it is an implied term of every employment relationship that the relationship can only be terminated with reasonable notice of termination – or pay in lieu thereof – where the termination is without just cause. Reasonable notice of termination can be significant, particularly for employees in senior posi-

tions, older employees, and those with lengthy service with the employer. As a result, employers often use termination clauses in employment contracts to limit the amount of reasonable notice to be provided upon termination. Such clauses are subject to strict analysis in some jurisdictions, whereas courts are not bound by them in others.

To be enforceable, employment contracts must be agreed to at the time of hire. If an employment contract is signed or amended once employment has begun, fresh consideration would be required for the contract to be valid.

1.3 Working Hours

Most jurisdictions limit the number of hours that can be worked in a week. Meal breaks and other shorter breaks during the working day are also typically required by legislation. In most cases, an employee is entitled to an unpaid meal break of at least 30 minutes after having worked five consecutive hours. If an employee is required to remain at their workstation or otherwise be available for work during a break, the employer will be required to pay the employee for the break time. Employment standards legislation also often requires additional rest periods during the work day once an employee has worked a certain number of consecutive hours.

Generally, the same laws apply to employees who perform full-time work and those who perform part-time work. There are no specific terms required for part-time employment contracts.

Employment standards legislation provides for overtime pay once a specific number of hours are worked in a week. In most jurisdictions, overtime is triggered at 40 hours a week and is paid at one-and-a-half times the employee's regular rate of pay. In Alberta and Ontario, overtime begins at 44 hours a week, however, it begins at 48 hours a week in Nova Scotia and Prince Edward Island. Some categories of employees can be excluded from the application of overtime rules – for example, managerial personnel or, in Quebec, employees paid on a basis other than an hourly one.

In some circumstances, the applicable legislation allows employers and employees to enter into “aver-

aging” agreements that allow for hours of work to be averaged over a period of several weeks for the purpose of determining entitlement to overtime pay.

1.4 Compensation

Each jurisdiction in Canada, including the federal jurisdiction, has enacted legislation providing for a minimum wage for most full-time, part-time, and casual employees. The minimum wage is typically adjusted by regulation on an annual basis. If a provincial minimum wage rate exceeds the federal wage rate, employers must pay the higher of the two.

In addition to providing employees with their base wage or salary, employers in Canada often provide end-of-year bonuses to employees or offer employees the opportunity to earn performance-related pay to motivate productivity. Grants of shares, stock options and profit-sharing programmes are also common for executive-level employees.

Employers may be liable to provide payment on account of any bonus, performance-related pay, or other perquisite that an employee would have received had they continued to be employed during either the statutory or reasonable notice period (see **7.2 Notice Periods**). Courts will consider whether the applicable perquisite formed part of the employee’s compensation package or was simply provided at the employer’s discretion on occasion. Carefully drafted employment contracts and policies may serve to limit such payments during any reasonable notice period, so long as statutory requirements are met. Such terms are typically included in executive employment contracts where perquisites may be a significant component of the executive’s compensation.

Compensation

Beyond minimum wages, some jurisdictions have enacted legislation regulating executive compensation in the public sector. That legislation typically prescribes requirements for public disclosure, caps on salary and performance-related pay, signing bonuses, severance payments, etc.

By contrast, executive compensation in the private sector is not specifically regulated by employment law. However, certain corporate, securities and tax laws

governing compensation (particularly where compensation includes grants of shares and options) as well as board requirements and shareholder approvals may be triggered and must be considered when determining the compensation of executives.

Equal Pay

Various federal and provincial governments have enacted pay equity legislation to achieve equal pay for work of equal value. Federally regulated public and private sector employers with ten or more employees must develop a pay equity plan to address gender-based pay inequities as of September 2024. Provincially, pay equity is legally required in separate pay equity legislation for the public sector in Manitoba, Nova Scotia, New Brunswick and Prince Edward Island and for the public and certain private sectors in Quebec and Ontario.

1.5 Other Employment Terms

Vacation and Vacation Pay

In each Canadian jurisdiction, employees are entitled to paid vacation. Most often, employees are initially entitled to a minimum of two weeks of paid vacation per year. However, employers commonly provide their employees with a total of three to four weeks’ paid vacation per year. Many jurisdictions have tiered vacation allotments, whereby employees with three or more years of service can be entitled to three weeks of vacation.

Furthermore, many jurisdictions entitle employees to vacation pay dependent on length of service and usually equal to a percentage of accumulated wages earned per year, such as 4% to 6% for Ontario, British Columbia, and Quebec.

In addition, public holidays are also prescribed by federal, provincial and territorial employment standards legislation. Employees are generally entitled to take public holidays off with regular pay. However, employees can agree to work on a public holiday and will normally be entitled to receive a day off in lieu of the public holiday or be paid at a premium rate for hours worked that day.

The Canada Labour Code was amended to add a tenth paid holiday, designated as the National Day for

Truth and Reconciliation, starting in 2021 for employees in the federally regulated sector. Shortly after the federal government created this paid holiday, British Columbia, Prince Edward Island, Manitoba, Yukon and the Northwest Territories followed suit in recognising the National Day for Truth and Reconciliation as a paid holiday provincially.

Required Leaves

Employment standards legislation in each jurisdiction establishes various leaves of absence during which employees' jobs must be protected. Common to most jurisdictions are maternity, parental, adoptive, bereavement and sick leave. Some jurisdictions also provide for reservist leave, jury duty leave, organ donation leave, family obligations leave, emergency personal leave and family care-giver leave for seriously ill family members.

Following a protected leave of absence, the employer is generally required to return the employee to the position that they held at the start of the protected leave, or to a comparable position if the original position no longer exists. The timing, duration, qualifying periods of employment, proof and notification requirements, as well as rules regarding the employer's obligation to continue benefit-plan contributions applicable for the above-mentioned leaves vary by jurisdiction.

As a general rule, employment standards statutes do not require paid leaves of absence. However, amendments to the federal Canada Labour Code, the Prince Edward Island Employment Standards Act, the Ontario Employment Standards Act, 2000, and the British Columbia Employment Standards Act have created exceptions to this general rule. Other government-provided payments may, however, be available to those on leaves of absence. By way of example, unemployment insurance benefits are provided to those on maternity and parental leave and – in prescribed circumstances – for those on sick leave. Further, where an absence from work is the result of a work-related illness or injury, compensation may be available under the statutory workers' compensation regime administered by each province. However, many employers provide paid leave for periods of certain leaves as part of their benefits programmes or

compensation packages – for example, paid maternity or parental leave is common.

In some circumstances, employers could be obliged to provide a longer period of leave than required by statute in order to meet the duty to accommodate imposed by human rights law.

Limits on Confidentiality

At both common law and civil law, employees have an obligation to maintain the confidentiality of the employer's proprietary information and not to disclose or make use of such information for personal advantage. Employment contracts are frequently used to specifically reinforce this obligation. Confidentiality clauses that limit the use and disclosure of non-public, proprietary information about the employer's business, both during and following the end of the employment relationship, are generally enforceable.

Canadian employers are also increasingly beginning to insert non-disparagement clauses in separation agreements with departing employees. These clauses prohibit the former employee from making comments or statements that negatively impact the former employer's reputation, business, management, products, services and/or clients. Non-disparagement clauses that are clearly drafted are generally enforceable.

Employee Liability

Generally, employees will not be found personally liable when acting in the course of their employment within the scope of their authority. Rather, an employer will often be found to be vicariously liable for harm caused to third parties by actions committed by employees in the course of discharging their employment duties, even if an employer has not been negligent or committed other faults.

Canadian courts have identified policy reasons for placing fault and liability on employers rather than employees in such instances, including the employer's power to direct and control its employees, the employer's role in creating the risk of harm to others by creating the circumstances in which the harm occurred, and the employer's ability to pay the harmed third party. However, an employee may be held liable

- without incurring vicarious liability for an employer
- for actions causing harm to third parties that are not sufficiently connected to their employment or are committed outside of discharging employment duties.

There are instances in which an employee may nevertheless be held personally accountable for their actions that cause harm during the course of their employment, even if such actions are connected to their employment. By way of example, supervisory employees who fail to discharge their responsibility to take reasonable steps to ensure the safety of workers may be found criminally negligent alongside an employer. Indeed, courts have convicted supervisory employees of criminal negligence for deaths and injuries resulting from non-compliance with workplace safety legislation. Further, where an employee engages in certain illegal conduct in the context of their employment (such as discrimination prohibited by human rights legislation), liability may potentially flow to both the employee and employer.

2. Restrictive Covenants

2.1 Non-Competes

Generally, Canadian employers can restrict an employee's activities during and after employment through clauses that limit an employee's ability to compete with the employer's business. However, Ontario legislation – effective as of October 2021 – has prohibited employers from entering into non-competition clauses with the vast majority of employees, with narrow exceptions in the context of certain sales of business and for certain executive employees.

During employment, non-competition clauses can prohibit the employee from holding other employment or holding employment that would result in a conflict of interest. Following the end of the employment relationship, employers can seek to restrict a former employee's post-employment activities by limiting or prohibiting competition with the employer's business.

In Canada, courts view restrictive covenants in employment agreements as restraints of trade that are *prima facie* unenforceable. Unless the employer can prove that the non-competition clause is reason-

able between the parties and in the public interest, the clause will not be enforced. A non-competition clause will only be enforceable if it is proportional in time, territory and scope to the former employer's legitimate business interest that is in need of protection.

Typically, non-competition clauses are enforceable only where the former employee subject to the clause held an important customer-facing position or otherwise personifies the business. In such cases, courts are willing to recognise that employment by a competitor or the creation of a similar business is likely to unfairly disrupt the former employer's business.

Like all contractual terms, a non-competition clause will only be valid if consideration was provided at the time the covenant was imposed. If imposed at the point of hire, then the offer of employment is sufficient consideration. However, covenants imposed following the start of employment – for example, upon an employee's promotion within the business – require fresh consideration flowing from the employer to the employee in exchange for the employee's commitment.

2.2 Non-Solicits

Employers can restrict a former employee's post-employment activities by limiting or prohibiting the solicitation of the employer's employees or contractors following the end of the employment relationship. Unlike non-competition clauses, courts are more inclined to uphold and enforce non-solicitation clauses – often commenting that such clauses are sufficient in conventional employment situations (ie, where the former employee is not an executive, director, key employee, or fiduciary). Like all restrictive covenants, the scope of the clause must be reasonable. Non-solicitation clauses of limited duration (ie, six months to 12 months) are more likely to be found to be enforceable.

Limitations or prohibitions on the solicitation of a former employer's customers or suppliers are also commonly used to restrict an employee's post-employment activities. As with non-solicitation of employee provisions, any restrictions will only be enforceable if proportional in time and scope to the former employer's legitimate business interest. Non-solicitation

clauses of limited duration (six months to 12 months) and applicable to those customers or suppliers with whom the former employee had contact as a result of their employment are more likely to be found to be enforceable.

3. Data Privacy

3.1 Data Privacy Law and Employment

In Canada, the Personal Information Protection and Electronic Documents Act (PIPEDA) governs the collection, use and disclosure of personal information. However, in the employment context, PIPEDA only applies to federally regulated organisations. PIPEDA requires employers to adhere to the following ten basic principles regarding the collection, use or disclosure of employees' personal information:

- accountability;
- identifying purposes;
- consent;
- limiting collection;
- limiting use, disclosure and retention;
- accuracy;
- safeguards;
- openness;
- individual access; and
- challenging compliance.

Alberta, Quebec, and British Columbia have enacted similar legislation that applies to employees and employers in those provinces. If an individual believes their privacy rights have been violated, a complaint can be filed with the provincial or federal privacy commissioner.

In June 2022, the federal government proposed the Digital Charter Implementation Act 2022 (Bill C-27), which – if passed – would have modernised Canada's current federal framework for the protection of personal information in the private sector and introduce new rules for the development and deployment of AI. However, as of 6 January 2025, Bill C-27 was terminated following the prorogation of Parliament until 24 March 2025.

General Principles

In some jurisdictions, the general principles relevant to the application of privacy principles to employees are that the collection, use and disclosure of employee personal information must be for the reasonable purposes of managing, establishing or terminating an employment relationship. Additionally, at the time the information is collected, the employer must give notice to the employees of the purposes for which their personal information is being collected, used or disclosed. If notice is not given, the employer will need to obtain employee consent.

Safeguards and Processes

Safeguards and processes must be put in place by employers to prevent unauthorised access, use or disclosure of employees' personal information. Employers must also have privacy processes and procedures in place. Employees are entitled to request access to the personal information collected by their employer and may correct any inaccuracies therein.

In addition, rules regarding the transfer of data across borders are also included in privacy legislation and must be respected. If employees' personal information is to be transferred out of Canada, including to a subsidiary, the same rules of notification and consent apply. In the event of transfers to the USA, any notice given to employees should include a statement that the information may be available to the US government or its agencies in accordance with local laws.

Provincially Regulated Workplaces

For provincially regulated workplaces outside of Alberta, British Columbia, and Quebec, there is no legislation that specifically establishes requirements around employee privacy (except in respect of employees' personal health information). However, Ontario's Employment Standards Act, 2000 requires that employers with 25 or more employees on 1 January of any year have a written policy in place with regard to electronic monitoring of employees by March 1st of that year. Courts and adjudicators in all Canadian jurisdictions are increasingly attentive to privacy-related concerns and have begun using common law principles to hold employers and other parties liable for violations of privacy rights.

4. Foreign Workers

4.1 Limitations on Foreign Workers

In Canada, only Canadian citizens and individuals who meet the immigration requirements for permanent residency may engage in employment as of right. Citizens of other countries must obtain a work permit to work in Canada.

Under Canadian law, if an employee is working without a valid permit or other government authorisation, the employer is deemed to have knowledge that the employee is not permitted to work in Canada. Employers can face fines as well as imprisonment for employing such employees.

4.2 Registration Requirements for Foreign Workers

Obtaining a Work Permit

To obtain a work permit in Canada, a person must have their job offer “confirmed” by a government agency (Employment and Social Development Canada) in the area in which the employer conducts business. Through this process, the employer must demonstrate that it has made reasonable efforts to hire a Canadian, that there were no Canadians available who were qualified to perform the job, and that the effect of allowing the foreign worker to work in Canada will enhance employment opportunities in the country or – at least – will not detract from employment opportunities. Thereafter, an immigration officer may issue a work permit for a specific period of time.

Exemptions

There are a number of exemptions to the requirement for a work permit and special rules applicable to certain industries (eg, agriculture) or particular work positions (eg, live-in care-givers). Exemptions or expedited processes for professionals, senior employees of multinational companies, intercorporate transferees, traders and salespersons are also available. In many circumstances, the Canada–United States–Mexico Agreement (CUSMA) provides for special rules applicable as between Canada, Mexico and the USA.

Others may work in Canada as business visitors if they can demonstrate that their business activities are international in scope and that they are not entering

the Canadian labour market. This can be shown if the main source of pay for the work done in Canada originates from outside Canada. Normally, a business visitor will be permitted to work in Canada for six months at a time.

Public Registry for Employers of Foreign Workers

As of December 2020, the government of British Columbia began a public registry of employers who are registered to hire foreign workers. The registry applies to most employers (including individuals) who hire foreign workers, such as those hired under the Seasonal Agriculture Worker Program, the Home Child Care Provider or Home Support Worker pilot, and other programmes that require a Labour Market Impact Assessment. An employer does not need to register if they are an excluded employer – including those who currently employ foreign workers and do not intend to hire more workers – or if they only hire foreign workers under the Provincial Nominee Program or the International Mobility Program. In addition, employers hiring temporary foreign workers as domestic workers (eg, workers who provide services such as childcare, cooking and cleaning in a private home) are required to register the worker with the government of British Columbia within 30 days of hiring them.

5. New Work

5.1 Mobile Work

In Canada, employees do not have a right to work from home. However, employers are increasingly implementing remote work arrangements in their workplaces – whether fully remote or “hybrid” models. In Canadian jurisdictions where an employee’s home is considered an extension of the workplace, requirements and duties set out in provincial occupational health and safety statutes apply. Furthermore, employers are required to take reasonable steps to prevent workplace bullying and harassment and address such conduct where it occurs “virtually” under applicable human rights and occupational health and safety legislation.

5.2 Sabbaticals

In Canada, employees do not have a legal right to sabbatical leave. However, Canadian employers may

choose to provide their employees with sabbatical leave. Depending on the employer's policy, a sabbatical can either be paid or unpaid. An employer may also implement eligibility requirements in order to take sabbatical leave, such as a certain number of years in service.

5.3 Other New Manifestations

As a direct result of the COVID-19 pandemic, new models of work have increased in prevalence in Canada, including:

- four-day working weeks;
- “hotelling” – a practice associated with telecommuting, whereby telecommuters reserve an office or workstation for their in-office days in lieu of assigning them a permanent work space;
- “flextime” – a type of alternative schedule that gives a worker greater latitude in choosing their particular hours of work or grants the freedom to change work schedules from one week to the next, depending on the employee's personal needs;
- “compressed work week” – an alternative scheduling method that allows employees to work a standard working week of their regular hours over a period of fewer than five days in one week or ten days in two weeks;
- “job-sharing” – the practice of having two different employees performing the tasks of one full-time position; and
- minimum in-office days – the practice of mandating specific days (ie, “anchor” days), or a specific number of days, on which employees are required to attend the workplace for in-person meetings and collaboration.

Employees do not have a legal right to these models of work and, even though Canadian employers are looking to implement flexible models of work in the post-pandemic work environment, many employers are requiring employees to return to the workplace on a regular basis.

6. Collective Relations

6.1 Unions

Each jurisdiction in Canada has labour relations legislation that establishes employees' rights to join a union, engage in a process of collective bargaining and enter into a collective agreement with the employer that defines the terms and conditions of employment in the unionised workplace. Employees' rights to organise and engage in a process of dialogue with their employer are recognised and protected in both labour relations legislation and the Canadian Charter of Rights and Freedoms, which is a part of the Canadian Constitution.

Unions in Canada acquire bargaining rights most commonly through certification or voluntary recognition. Through certification, a union acquires the right to represent a specific group of employees – a “bargaining unit” – by demonstrating to the governing labour board that it has the support of the majority of employees it seeks to represent. In some jurisdictions, a union may be voluntarily recognised by the employer as representative of the employees. Finally, in exceptional circumstances, a union may be certified as representative of the employees by a labour board as a remedy for an unfair labour practice committed by an employer.

Certification Procedures

Two certification procedures are found in Canadian jurisdictions: “card-check” and “mandatory vote” certification. In card-check jurisdictions, a union that presents a sufficient number of signed membership cards may be certified solely on that basis and without an employee vote. In mandatory vote jurisdictions, unions must present a sufficient number of signed membership cards in order to trigger a secret ballot vote; the union will only be certified if it wins the support of more than 50% of employees who cast ballots. Some jurisdictions combine elements of both certification systems.

Entitlement to Unionise

However, not all employees in Canada are entitled to unionise. Indeed, personnel who exercise managerial or supervisory functions or who are employed in a confidential capacity in matters relating to labour

relations (for example, HR professionals) are generally excluded from the protections in labour relations legislation. Additionally, certain sectors or industries (eg, the education sector and the agricultural industry) can have separate labour relations legislation that establishes individualised regimes.

6.2 Employee Representative Bodies

Employee representative bodies, most commonly referred to as employee associations in Canada, are generally not regulated and are generally not afforded the same rights and protections as trade unions across the country. Such associations can be instituted by any person, including an employee or the employer.

Even though an employer has no legal obligation to recognise or engage with an employee association, employers in Canada may choose to do so as a means of involving employees in workplace matters and proactively identifying and resolving worker dissatisfaction. However, the right of certain employees to form or become members of an employee association is protected by legislation.

6.3 Collective Bargaining Agreements

The employer has a duty to bargain in good faith with the union, once it has been certified, to reach a collective agreement. The collective agreement defines the terms and conditions of employment for the bargaining unit. The collective agreement reached will apply to all employees in the bargaining unit and not only those who showed support for the union during the certification process. The employer is no longer permitted to negotiate or contract directly with employees in the bargaining unit over terms and conditions of employment.

Certain minimum standards are required in collective bargaining agreements in Canada or, in the absence of such a term, are implied at law. By way of example, most Canadian jurisdictions require that a collective bargaining agreement provide for a minimum term of one year – although employers and unions may agree to a lengthier term. The collective bargaining agreement must also provide that no strikes or lockouts will occur during the term. Additionally, collective bargain-

ing agreements across Canada must include a grievance and arbitration procedure for resolving disputes.

Although parties to a collective bargaining agreement may agree to a variety of terms and conditions of employment, the parties cannot contract out of certain protections, including human rights protections and minimum employment standards. Canadian courts have concluded that those laws are necessarily incorporated into each collective bargaining agreement, even if the express terms of the agreement provide otherwise.

Federal Prohibitions on Replacement Workers

On 20 June 2025, the Canada Labour Code and the Canada Industrial Relations Board Regulations 2012 were amended. The amended legislation now prohibits employers from using replacement workers in specific contexts. This includes:

- employees and managers hired after the notice to bargain was given;
- contractors (regardless of hire date), except where the contractors were continuing to do their own work that was substantially similar to work done by striking or locked-out employees before the notice to bargain was given;
- any employee whose normal workplace is a workplace other than that at which the strike or lockout is taking place, including anyone transferred to the strike or lockout location after the notice to bargain was given; and
- any volunteer, student or member of the public.

The prohibition in this regard is subject to exceptions, which includes:

- affording employees the opportunity to work before the strike or lockout or to prevent threats to life, health or safety;
- destruction or serious damage to the employer's property/premises; or
- serious environmental damage affecting the employer's property/premises.

If the employer is convicted and prosecuted of breaching the above-mentioned prohibitions, they may be fined between CAD1,000 and CAD10,000 per day.

7. Termination

7.1 Grounds for Termination

Individual Termination

In a non-union employment relationship, employers can terminate an employee's employment for just cause on a summary basis or, in most jurisdictions in Canada, without cause upon provision of notice of termination or pay in lieu thereof. Except in some jurisdictions, an employer is generally not required to provide a reason for electing to terminate an employee on a "without cause" basis. By contrast, in a unionised workplace, the collective agreement between the union and the employer will almost always provide that employees can only be terminated upon an assertion of just cause.

An employer must provide notice of termination to the employee in writing. During the statutory notice period, an employer must not reduce an employee's wages or alter any term or condition of employment, including contributions to any existing benefits plan. Employees in Nova Scotia, Quebec and the federal jurisdiction who are non-unionised and are non-managerial may resort to a statutory mechanism to challenge their termination if they have the requisite level of service. There are specific procedures to challenge a termination in these circumstances and reinstatement upon a finding of unjust termination is a potential remedy.

An employer's failure to adhere to requirements in employment standards legislation may result in the imposition of fines or orders to compensate employees for losses incurred as a result of the employer's contravention.

In most Canadian jurisdictions, employment standards legislation requiring notice – or pay in lieu thereof – is not automatically applicable where an employee has been laid off on a temporary basis. However, once a lay-off surpasses a specified period of time, it will generally be considered a termination and employer obligations regarding notice of termination will apply.

Mass Termination

Mass terminations attract different statutory treatment. Every jurisdiction, except Prince Edward Island

and Alberta, has employment standards legislation imposing obligations on employers where the number of employees dismissed at the same time surpasses a prescribed threshold. The minimum number of dismissed employees required to attract the mass termination notice requirements ranges from ten to 50 employees, depending on the jurisdiction.

The required amount of notice in a mass termination is based on the number of terminated employees, rather than the employee's length of service. In a unionised workplace, the collective agreement established through the bargaining process between a union and the employer will almost always provide a protocol governing employer obligations and employee rights where individual or mass lay-offs occur.

7.2 Notice Periods

In circumstances where an employee is dismissed without cause, written notice of termination – or pay in lieu of notice – must be provided by the employer. Although statutory minimum notice requirements vary across jurisdictions, in all cases the notice requirement increases according to an employee's length of service.

The common law – as well as civil law in Quebec – prescribes a supplemental "reasonable" notice period, which is typically well in excess of the statutory notice entitlements required by provincial and federal legislation. What constitutes reasonable notice is determined on a case-by-case basis, having regard to the employee's length of service, age, position, and the availability of similar employment. Common law notice periods typically fall within a general range, depending on the nature of employment and the terminated employee's characteristics. The reasonable notice entitlement for a long-service employee have increased in recent months and can now range upwards of 24–28 months.

In Ontario and at the federal level, employment standards legislation creates an entitlement to severance pay for eligible employees. Severance pay is intended to recognise and reward long-term employees for their years of service. Severance pay is not the same as notice of termination, or pay in lieu thereof, and will be

in addition to any notice or pay in lieu thereof to which the employee is entitled.

In Ontario, employment standards legislation provides that an employee who has worked for the employer for five or more years is entitled to severance pay if the employer has a payroll of at least CAD2.5 million or has severed the employment of 50 or more employees within a six-month period owing to a total or partial closure of the business. The amount of severance pay is calculated by multiplying the employee's regular weekly wage by the number of years of employment. The maximum amount of severance pay required to be paid in Ontario is 26 weeks.

Mass Termination

Employers are not required to seek government advice or approval for implementing a dismissal or mass lay-off. However, employment standards legislation in most jurisdictions requires that advance written notice be provided to an applicable government authority prior to implementation of a mass lay-off. Such notice provides the local government with the opportunity to offer employees various forms of support, if warranted.

7.3 Dismissal for (Serious) Cause

At common law (and civil law in Quebec), an employee may only be terminated without notice – or pay in lieu thereof – if just cause (or serious reason) is established. Although there is no definition of “just cause” at common law, or “serious reason” at civil law, courts will generally find just cause where an employee's misconduct causes a breakdown in the employment relationship and amounts to a repudiation of a fundamental term of the employment contract. Acts of misconduct such as theft, fraud, disobedience and serious breaches of employer rules or policies will often be found to amount to just cause. By contrast, termination for poor performance will rarely amount to just cause.

Determining Just Cause

The determination of whether an employer does in fact have just cause is a fact-based analysis and is determined on a case-by-case basis, having regard to the misconduct at issue as well as to mitigating factors such as lengthy service. Canadian courts

require a contextual approach and the application of the principle of “proportionality” in any determination of cause. Courts will generally examine the nature and circumstances of any misconduct to determine whether an effective balance was struck between the severity of the employee's misconduct and the employer's imposed sanction of termination. Generally, serious misconduct is required and a single incident of misconduct or mistake will not give rise to cause for termination of employment.

Statutory Mechanisms to Challenge Termination

In addition to civil actions before the courts, employees may resort to statutory mechanisms to challenge an employer's termination. Statutory claims may be subject to a higher standard for assessing just cause. By way of example, Ontario legislation mandates that an employer must prove “wilful” misconduct, disobedience or neglect of duty that is not trivial and has not been condoned by the employer in order to establish just cause for termination. Such a determination is always dependent on the factual circumstances of the particular case. In most cases, serious and deliberate misconduct is required and carelessness or inadvertent misconduct will not give rise to cause for termination of employment.

Evidence Required for Termination

In virtually all unionised workplaces, employees can only be terminated where just cause exists. A similarly high standard exists for the termination of a non-unionised employee.

In most cases, in order to find that the employer had just cause to terminate the employment relationship, a court will require evidence that an employee was provided with warnings to improve their conduct or performance. Employees must also be provided with a reasonable time to improve and, in some circumstances, assistance from the employer to that end. In the exceptional circumstances of a serious single incident, termination for cause may be upheld without prior warnings.

Courts will also consider whether an employer has investigated the alleged misconduct and provided the employee with an opportunity to explain. Finally, courts will not generally allow an employer to rely on

conduct that the employer has previously condoned to establish just cause.

Upon termination for cause, employers should advise employees of the reasons for termination and record those reasons in the termination letter. If challenged, employers will generally be required to prove each reason relied upon before an adjudicator will find just cause for termination. Canadian courts have held that it is an implied term of an employment contract that an employer may terminate an employee for cause without any notice. As a result, an employer will not be required to provide an employee with notice of termination or pay in lieu of notice where the employer asserts just cause for termination.

Civil Actions and Statutory Claims

In most jurisdictions, non-unionised employees may challenge a termination for cause by commencing either a civil action or a claim provided for through a statutory mechanism.

In civil actions, employees will claim that the employer did not have just cause to terminate their employment without notice and, as such, that they were wrongfully dismissed. Employees will seek damages for the notice that would have been required if the employer had terminated the employee without asserting just cause. The employer bears the onus of proving cause for termination.

By contrast, in a statutory claim, an employee will generally only be entitled to receive their minimum statutory entitlements if just cause is not established. In some jurisdictions, such as Quebec, an employee credited with two years of uninterrupted service could also be reinstated in their employment and compensated for any lost wages if the employer does not meet its burden of proving that the termination was made for just cause.

In unionised workplaces, employees must resort to grievance arbitration. If an employer is unable to establish just cause, the employee will – in most instances – be reinstated and compensated for any lost wages.

7.4 Termination Agreements

It is permissible for employment contracts in Canada to contain express termination clauses that govern the parties' rights and obligations on termination. These clauses may be agreed to either prior to or after the termination of the employment relationship. Contractual termination clauses are legally enforceable so long as the provisions do not violate mandatory statutory minimums, including notice periods or pay in lieu of notice requirements. In this regard, it is of note that the Ontario Court of Appeal has found that an unenforceable "for cause" termination clause that violated the Ontario Employment Standards Act 2000 invalidated the contract, resulting in the awarding of common law damages rather than the limited termination entitlements provided for in the contract.

In Quebec, however, civil law provides that an employee may not renounce in advance their right to obtain an indemnity where insufficient notice of termination is given. Therefore, a court would not be bound by a contractual termination clause that would have been agreed at the beginning of the employment relationship and where – given the given nature of the employment, the specific circumstances in which it is carried on and the duration of the period of work – the termination notice previously agreed upon has become unreasonable.

Full and Final Releases

Contractual termination clauses often include "full and final" releases. Under such a release, an employee relinquishes all legal claims against the employer related to their employment in exchange for some form of consideration from the employer (typically, a defined payment or number of payments). Obtaining a release from an employee upon termination does not guarantee that an employee will not commence a future claim against an employer. Rather, the validity of any release signed by an employee who subsequently commences a wrongful dismissal action (or other claim related to their employment) is a determination to be made by an adjudicator.

A release may specifically limit an employee's entitlement to reasonable notice and expressly set out the required period of notice or payment to be made in lieu thereof. A release will only be found to be enforce-

able if the employer provides the employee with more than their minimum entitlement under employment standards legislation. As individuals cannot release their statutory rights, it is important that releases are carefully drafted.

7.5 Protected Categories of Employee

Under the criminal laws applicable across all Canadian jurisdictions, it is a criminal offence for an employer to discipline, demote, terminate or adversely affect employment with the intent to:

- compel an employee to abstain from providing information to law enforcement authorities concerning an offence that the employee believes has been or is being committed by the employer; or
- retaliate against an employee for making such a disclosure.

Other specific “whistle-blower” legislation has been introduced to protect public sector employees and those who report corporate breaches of securities laws.

Reprisals

Various laws prohibit employer “reprisals” against an employee for specific reasons, including:

- employee requests for employer compliance with legal obligations;
- the exercise of legal rights in connection with one’s employment;
- the making of complaints to an employer about workplace issues; or
- the reporting of unlawful conduct to law enforcement officials.

By way of example, workplace health and safety legislation prohibits employers from dismissing or disciplining, imposing a penalty upon, or intimidating or coercing an employee because the employee has raised a health and safety concern.

Similarly, human rights legislation prohibits employers from reprisals against an employee for making a human rights complaint, as discussed in **8.2 Anti-Discrimination**. Many large employers in Canada have established confidential hotlines or similar

mechanisms that allow an employee to make internal complaints. Employees may also have the option of directing their complaint to a responsible government authority within the particular jurisdiction – many of which have online mechanisms in place to receive complaints.

Furthermore, legislation governing the unionised employment relationship generally protects employees against reprisals for exercising legal rights in connection with a union and collective bargaining. Union officers or representatives (union stewards) enjoy enhanced protections in this respect.

When acting in their official capacity, such representatives are often provided more leeway to refuse to follow management instructions and more leeway to openly oppose management in the course of their duties. However, union representatives are not permitted to make false or malicious statements, or engage in harassing or violent behaviour towards management or other workplace parties.

Workplace Harassment

The Workplace Harassment and Violence Prevention Regulations under the Canada Labour Code require federally regulated employers to develop a prevention policy with regard to workplace violence and harassment, including sexual harassment and sexual violence. This includes an assessment of risk factors, training that will be provided to employees, and resolution processes for employees who witness or experience workplace harassment or violence, among various other requirements. Many provinces require similar workplace policies in accordance with their respective occupational health and safety legislation.

In Quebec, employers must protect employees from psychological harassment from “any person” and the legislation specifically outlines what is to be included in workplace policies to prevent and manage situations of psychological harassment and sexual violence. The legislation also grants regulatory power to determine measures to prevent or put a stop to sexual violence and requires mandatory training on sexual violence for arbitrators to whom grievances concerning psychological harassment are referred.

8. Disputes

8.1 Wrongful Dismissal

Where an employee believes that their employer has violated one of the rights described in this chapter, the employee may pursue a statutory or common (or civil) law remedy, depending on the jurisdiction and specific right or entitlement at issue. Arguably the most common type of claim is a civil claim for “wrongful dismissal”, in which the employee alleges that the former employer did not provide sufficient reasonable notice of termination under the common law.

In a civil wrongful dismissal claim, the onus is on the employer to prove cause for termination. It is generally accepted to be a difficult onus to discharge. If the employer is unable to establish just cause or point to a valid contractual termination clause that specifically limits the employee’s entitlements on termination, then the employee’s wrongful dismissal claim will succeed.

Where an employee has made a successful wrongful dismissal claim, the courts are required to determine the amount of reasonable notice that the dismissed employee should have received. The list of factors the court will rely upon in making this determination vary, but often include the characteristics of the former employment, the length of service of the employee, the employee’s age, and their re-employment prospects when considering the experience, training and qualification of the particular employee.

Awarding Damages

Although there is no cap on damages awarded to successful employees in wrongful dismissal claims, the range of common (or civil) law notice periods is typically between a few weeks and 24 months. Recently, court decisions reveal a growing trend of awarding periods in excess of 24 months, and in the range of 24–28 months in cases involving very long-serving employees or exceptional circumstances where a long notice period is warranted for aggravating reasons.

In determining the quantum of damages to be awarded in a wrongful dismissal claim, Canadian courts primarily focus on lost wages and benefits. The value of damages will reflect the value of the employee’s salary, bonus, healthcare benefits and other associated

entitlements an employee would have received but for their wrongful termination. The Supreme Court of Canada has clarified that employees may be entitled to a bonus or payment under incentive compensation plans despite no longer being employed and found that clear language is required to oust the common-law presumption that such payments apply during the reasonable notice period.

Additionally, and unlike statutory notice, dismissed employees claiming reasonable notice through a civil action have a “duty to mitigate” the damages resulting from their dismissal by actively searching for new employment. A court will deduct from a damages award any earnings gained through alternative employment subsequent to the wrongful dismissal and during the reasonable notice period. Where an employee fails to seek alternate employment after their wrongful dismissal, the court may reduce the damages award accordingly.

Damages for emotional distress or punitive damages are rare, but may be awarded where the employer’s conduct was of such an egregious or malicious nature that it warrants judicial sanction. However, the Supreme Court of Canada has repeatedly stated that punitive damages should be awarded with restraint.

8.2 Anti-Discrimination

Each jurisdiction in Canada has enacted human rights legislation that protects employees from discrimination on a variety of grounds. Typical protected grounds include race, ancestry, place of origin, colour, ethnic origin, creed/religion, citizenship, sex, sexual orientation, age, record of offences, marital status, family status, and disability. Numerous jurisdictions have human rights legislation that includes protection on the grounds of gender identity and gender expression.

Human rights legislation protects an individual in all aspects of the workplace environment and employment relationship.

In all jurisdictions, human rights legislation permits an employer to use the defence of bona fide occupational requirement. The defence allows an employer to argue that a discriminatory requirement, qualification or factor of employment is reasonable and appropri-

ate, given the nature of the employment or essential duties of the position in question. Whether a specific job requirement constitutes a bona fide occupation requirement is a determination to be made by an adjudicator.

Burden of Proof

The burden of proof rests with an employee to establish, on a balance of probabilities, that an employer discriminated against them on the basis of a protected ground. The employee must show a prima facie case that there is a connection between the negative treatment and a protected ground of discrimination. An employee must only prove that the protected ground was a factor (ie, not that it was the sole or primary factor) in the negative treatment to discharge this burden.

The discharge of the burden possessed by an employee will be impacted by the nature of the discrimination that is claimed. By way of example, when claiming direct (ie, intentional) discrimination, an employee must prove that a protected ground was a factor in an employer adopting a rule or practice. When claiming indirect discrimination (ie, adverse impact discrimination) an employee must prove that a requirement, factor or qualification resulted in an adverse impact on the basis of a protected ground.

If discrimination is proven on a direct or indirect basis, the burden of proof shifts to the employer to defend their conduct based on a statutory exemption or by proving that the negative treatment was not in any way related to a protected ground.

Remedies

The range of remedies available to statutorily enacted employment and human rights tribunals generally tend to be broader than those available in a civil action. As an example, the Ontario Human Rights Tribunal has the ability to award financial compensation, non-financial remedies and public interest remedies. Non-financial remedies may include reinstatement, an offer of employment, a letter of reference as well as a letter of assurance of future compliance with human rights legislation. Public interest remedies are intended to be an educational tool and to prevent similar future discrimination from occurring. Public interest remedies may include ordering an employer to develop non-

discriminatory policies and procedures and to implement mandatory education and training programmes in the workplace.

In recent years, some human rights adjudicators have awarded significant damages for violations of human rights ranging between CAD25,000 and CAD40,000. In an exceptional 2021 decision, the British Columbia Human Rights Tribunal awarded significant damages of approximately CAD176,000 for injury to dignity, feelings and self-respect, in addition to more than CAD700,000 in compensation for lost wages. This decision reminds employers of the increasing and significant potential liability for breaches of human rights legislation.

Human rights tribunals generally do not award costs or attorney's fees to the successful party, with many lacking the authority to do so.

8.3 Digitalisation

As a direct result of the COVID-19 pandemic, the Canadian justice system continues to conduct virtual proceedings for hearing matters before the courts and administrative tribunals. Currently, virtual attendance is the default method of attendance in some proceedings, such as case conferences or pre-trial conferences, examinations for discovery, and motions. Trials conducted both by judge alone and by jury, generally, have returned to in-person sittings overall. Labour boards in each jurisdiction in Canada (including the Canada Industrial Relations Board) have also embraced virtual proceedings to a degree. However, there is a resumption of in-person proceedings taking hold with virtual proceedings being considered by way of special request.

Additionally, the Canadian courts and tribunals are embracing digitalisation of filing court documents, facta, compendiums, affidavits and other materials. The courts are also relying on selected digital platforms to share, view and present these documents in virtual and in-person proceedings.

9. Dispute Resolution

9.1 Litigation

Many employment disputes in Canada are dealt with by the numerous federal and provincial tribunals established to deal with specific employment issues. As an example, human rights complaints initiated by an employee against their employer are typically dealt with by the human rights tribunal or commission in the province where the employment relationship exists. It is possible for an employee or employer to apply to the superior court in each jurisdiction for a judicial review of a tribunal decision.

The provincial superior court in each province also has jurisdiction over wrongful dismissal claims and other employment-related disputes that relate to a breach of a common law (or, in Quebec, civil law) right, such as the requirement to provide reasonable notice of termination.

Class actions in the employment law context are permissible in Canada. Indeed, during the course of the past decade, there has been a significant increase in the use of class actions as a means of reducing the individual costs of employment litigation. Class actions in the employment context have included mass wrongful dismissal claims, retirement benefits claims, employment discrimination claims and – perhaps most frequently – claims related to the breach of employment standards legislation.

Recently, a growing number of wrongful dismissal cases have been decided by way of a summary judgment motion. Those cases have typically involved straightforward facts that are in dispute and have centred around notice entitlements and the enforceability of termination provisions.

9.2 Alternative Dispute Resolution

In the non-unionised context, Canadian courts are generally willing to uphold the terms of a pre-dispute arbitration agreement. In most cases, a court will engage in a deferential approach to the jurisdiction of arbitrators, including by finding that a challenge to the validity of a pre-dispute arbitration clause should

be determined at first instance by the arbitrator. The courts will be more inclined to scrutinise pre-dispute arbitration agreements where there is an obvious inequality in bargaining positions or where the invocation of the arbitration agreement would be oppressive or amount to an illegal contracting out of an employment standard.

In the unionised setting, disputes between a union and the employer are almost always dealt with through arbitration. Collective bargaining agreements typically specify the arbitral procedure to be engaged in between the parties.

9.3 Costs

The general rule across Canada is that the successful party in a civil lawsuit will be entitled to at least a portion of their costs or attorney's fees to compensate for the time and expense of bringing or defending a legal proceeding. It is rare that any successful party, whether an employer or employee, will be entitled to the full amount of legal fees incurred in a proceeding.

Costs awards, which can include both legal fees and general expenses associated with litigation in some jurisdictions, may typically represent between 40% and 50% of the actual amount of money expended by the successful party. However, a greater proportion (or the entirety) of legal fees may infrequently be awarded in cases where the conduct of the opposing party in the legal proceeding is considered to be egregious or reprehensible.

Some Canadian jurisdictions have special rules regarding costs to encourage settlement between parties. In Ontario and British Columbia, if an employee rejects an employer's written offer to settle a wrongful dismissal claim and the employee receives a judgment at trial that is no more favourable than the terms of the employer's rejected offer to settle, the employer may be entitled to recover their legal costs at a significantly higher rate than would typically be awarded.

In contrast, most tribunals that deal with employment matters do not have the authority to award the successful party costs.

Trends and Developments

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Baker McKenzie is a leading full-service law firm in North America, with over 850 lawyers in Canada and the United States. The firm has a global reach and provides strategic advice to help domestic and multinational companies grow, advising on federal, provincial, and local laws with an international perspective. The firm's Canadian labour and employment practice is based out of Toronto and works with small to large

domestic and multinational businesses to navigate all of their labour and employment needs, from day-to-day human resources requirements to critical global business change projects. Baker McKenzie has 50 years of experience in the Canadian market, acting as strategic business partners with clients by leveraging the firm's global footprint to provide solutions across jurisdictions.

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Developments in Employment Law in Canada in 2025

Introduction

The year 2025 saw major developments in Canadian labour and employment law. Below, the authors set out key trends that have emerged and shaped the legal landscape in Canada this past year.

The authors note at the outset that labour and employment laws in Canada vary by province, territory, and federal jurisdiction. The trends the authors discuss reflect general developments and may not address the specific nuances of each jurisdiction.

Employment standards and employee protections

Each province and territory and the federal jurisdiction in Canada has its own employment standards legislation with specific rules and requirements. Employment standards legislation sets out the minimum employment standards entitlements that employers must provide to their employees, including hours free from work, breaks, overtime pay, vacation, statutory holidays, leaves of absence, and notice of termination, among others. Most employers are provincially regulated; except for a small group of employers that fall under specific categories, federal employment standards under the Canada Labour Code do not apply to employers in Canada.

In 2025, Ontario has seen continued development in its provincial employment standards legislation – the Employment Standards Act, 2000 (ESA). These statutory changes are set to come into force this year after the passing of the Working for Workers Six Act, 2024, as well as proposed amendments under Bill 30, Working for Workers Seven Act, 2025. Both acts have also amended related legislation including Ontario's Occupational Health and Safety Act (OHSA), the Ontario Immigration Act, 2015 and the Workplace Safety and Insurance Act, 1997 (WSIA).

Key changes under the Working for Workers Six Act, 2024 which the authors outline further below, include the following.

- **New Categories of Leave** – Ontario employees have new leave entitlements. Employees with at least 13 consecutive weeks of service are now

entitled to a 27-week job-protected long-term illness leave if they experience a serious medical condition. Also, on a date to be determined in the future, employees with a least 13 weeks of service are entitled to unpaid leave of up to 16 weeks if a child is placed in the employee's care, custody or control through adoption or surrogacy.

- **Hiring and Newcomers** – the Ontario Immigration Act, 2015 now includes new standards for immigration representatives using Ontario's immigration nominee programme and imposing penalties on those who violate these standards in the form of fines, multi-year bans and lifetime bans.
- **Increased Fines from OHSA Violations** – the minimum fine for a corporation found guilty of a second or subsequent offence under the OHSA resulting in serious injury or death within a two-year period has now increased to CAD500,000.

With the exception of the "placement of a child" leave, the changes described above have come into force.

Key proposals under Bill 30, Working for Workers Seven Act, 2025 include the following.

- **No Fraudulent Job Postings** – operators of job posting platforms would be required to implement a procedure into the platform to report fraudulent job postings advertised to the public.
- **Unpaid leave entitlement** – employees would be entitled to three days of unpaid leave if they receive notice of termination with 50 or more other employees in the same four-week period.
- **Additional Amendments to the OHSA** – there are multiple proposed amendments to the OHSA including a reimbursement for eligible employers that purchase a defibrillator.

A second reading of the Working for Workers Seven Act has been ordered and may become law by the end of this year or the beginning of 2026.

Effective 1 July 2025, Ontario's Digital Platform Workers' Rights Act, 2022, is now in force. The Act introduces new rights and protections into the gig economy. It applies to workers who "perform digital platform work" and "Operators" who facilitate the performance of digital platform work through a digital platform. The

Act could cover ride share drivers and delivery service workers.

The Act provides “Rights” for gig workers which serve as entitlements. Notable entitlements include the following.

- Right to a Minimum Wage – Operators are required to pay a worker at least the minimum wage rate payable under the ESA, exclusive of tips and gratuities, for each work assignment performed.
- Right to Amounts Earned – Operators are prohibited from withholding any amounts owing to the worker including wages, tips, gratuities and other bonuses.
- Right to Recurring Pay Period and Pay Day – like a traditional employment relationship, workers are now entitled to a recurring pay period and pay day. All amounts earned by the worker during a given pay period, inclusive of tips and other gratuities, must be paid in full by the specified pay day for that pay period.

Emphasis on employee safety and wellbeing

Employers in Canada must ensure they comply with evolving employment standards aimed at protecting worker health, safety, and wellbeing. Recently, legislative changes, especially in Ontario, have placed greater emphasis on supporting employees through enhanced safety measures, expanded leave entitlements, and improved access to health resources. These changes underscore the need for employers to remain proactive in meeting their obligations and adapting to new requirements as they arise.

The new leave entitlements from Working for Workers Six also follows this trend. As mentioned, employees are now entitled to long-term illness leave for up to 27 weeks. Also, when the placement-of-a-child leave is proclaimed into force, employees with at least 13 weeks of service will be entitled to a maximum of 16 weeks off.

There are also several amendments to the OHSA aimed at improving safety for employees at the workplace. As mentioned, Working for Workers Six has increased mandatory minimum fines for corporations found guilty of a second or subsequent offence

under the OHSA. It also places greater obligations on employers to ensure their employees are equipped with adequate personal protective clothing and equipment (PPE). Any PPE that is provided or used must properly fit the employee and be appropriate in the circumstances.

Legislative amendments regulating the beginning and end of the employment relationship

Canadian employers face growing obligations as new legislation regulates how employment relationships begin and end. Legislation continues to introduce reforms that promote transparency in hiring, increase accountability for job postings, and strengthen protections for terminated employees. Employers must stay alert to these changes and take active steps to comply with evolving standards.

As mentioned above, Working for Workers Six has amended the Ontario Immigration Act, 2015, to impose new standards and stricter penalties on immigration representatives. Specifically, an immigration representative cannot make claims that falsely allege that an applicant meets a prescribed criteria for approval. They also cannot submit a document falsely alleging that an applicant meets prescribed criteria for approval. Representatives can receive fines, multi-year or lifetime bans for contravening this obligation.

If passed, Bill 30, Working for Workers Seven Act will provide support to potential employees as well as those nearing the end of their employment. As discussed above, job posting platforms will face stricter regulations about fraudulent job postings. Platforms must have a procedure to allow users to report fraudulent job postings advertised to the public. Platforms must also develop a written policy that includes information about how the operator of the platform will address publicly advertised job postings. The policy must be accessible in a conspicuous place on the platform.

The Working for Workers Seven Act would also provide support to terminated employees. Employees are entitled to three days of unpaid leave if they receive notice of termination along with 50 or more other employees in the same four-week period. The purpose of the leave is to allow employees to find alternate

employment which may include job searching, interviewing and training.

Digital Platform Workers' Rights Act

With the introduction of the Digital Platform Workers' Rights Act, Ontario joins British Columbia as another Canadian province that has developed legislation regulating the gig economy. Canadian jurisdictions will likely continue to regulate this sector as the gig economy maintains a presence in Canada. Employers should continue to monitor legislative developments to ensure they remain compliant with evolving obligations in this sector.

As previously mentioned, the Act provides several entitlements to employees in the gig economy including a right to minimum wage, amounts earned, and a recurring pay period and pay day. Beyond those entitlements, the Act also provides a right to information. Digital platform workers are now entitled to certain information during the worker-operator relationship. For example, within 24 hours of a worker receiving access to the digital platform, the operator must provide the worker with the following information in writing.

- Description of how pay is calculated.
- Whether tip or other gratuities are collected and if they are, when and how.
- The applicable recurring pay period and pay day.
- Details on any factors that may be used to determine how work assignments are offered and how such factors are applied.
- Whether the platform uses a performance rating system and any potential consequences based on the worker's rating and work performance.
- Details regarding factors used to evaluate the worker's performance and related consequences.

The parties cannot contract out of the Act's minimum requirements. They must also resolve all digital platform work-related disputes in Ontario. It does not specify what forum the parties must use to resolve a dispute like binding arbitration or mediation.

Workers are protected from forms of reprisal including intimidation for exercising their rights under the Act. There are also regulations about how an operator can

remove a worker's access to the platform. Operators are prohibited from removing a worker's access to the platform unless the operator has provided the worker with a written explanation as to why they are losing access. If access is removed for more than 24 hours, the operator must give the worker two weeks' written notice. Two weeks' written notice is not required if the worker:

- is guilty of wilful misconduct;
- is removed due to public safety concerns;
- is unable to legally perform digital platform work under applicable federal or provincial legislation or a municipal by-law; and/or
- must otherwise be removed as required by law.

Termination provisions in contracts

Termination provisions remain difficult for employers to enforce. Ontario courts continue to follow the landmark decision of *Waksdale v Swegon North America Inc*, 2020 ONCA 391. The Ontario Court of Appeal found that a non-compliant "for cause" termination provision can render the entire termination provision in an employment agreement unenforceable, even if an employer does not rely on that provision.

The Ontario Court of Appeal followed this principle when affirming the Superior Court of Ontario's decision in *Dufault v The Corporation of the Township of Ignace*, 2024 ONSC 1029. The Superior Court of Ontario held that a termination provision that stated the employer could terminate the employee in its "sole discretion" and "at any time" was unenforceable. The Court noted that the provision only referenced base salary as the entitlement owed to the employee upon termination. It neglected vacation pay, which forms part of the employee's regular wages. It also found the "for cause" termination provision unenforceable.

The Ontario Court of Appeal declined to consider if the without cause termination provision was enforceable. Rather, it relied on its previous holding in *Waksdale* that since the "for cause" termination provision was unenforceable, all termination provisions in the contract were rendered void.

The Ontario Court of Appeal followed this principle again in *De Castro v Arista Homes Limited*, 2025

ONCA 260. It affirmed the Superior Court of Ontario's decision that the "without cause" termination provision was unenforceable because the "for cause" termination provision violated the ESA and was therefore unenforceable. The Court of Appeal agreed with the lower court's reasoning that the definition of "cause" was too broad and allowed for termination without notice in situations not permitted by the ESA. The "for cause" provision included a list of possible reasons to justify termination. The list was introduced with the words "shall include" suggesting a non-exhaustive definition of "cause" which contravenes the ESA. The Court of Appeal also rejected the argument that the contract's intent to comply with the ESA could override the language used. If the employment agreement violates the ESA, the employer cannot excuse it by claiming that was not its intention.

Although it seems termination provisions are rarely upheld, recent case law suggests that Ontario Courts will do so if the provision is clear, unambiguous, and compliant with employment standards legislation. The Ontario Court of Appeal followed a similar principle in *Bertsch v Datastealth Inc*, 2025 ONCA 379. It affirmed the Superior Court of Ontario's decision to uphold a termination clause limiting the employee's entitlements to the minimum standards under the ESA. It rejected the argument that the termination provision could be misinterpreted by the average employee to mean they can be terminated "for cause for any reason without payment". To reach that conclusion, the employee would need to "ignore the words 'with or without cause'."

The Court of Appeal's reasoning affirms that a termination provision is not unenforceable simply because an employee may misinterpret its meaning. Rather, enforceability depends on whether the provision is objectively clear and compliant with legislation. The decision also confirmed that employers can limit termination entitlements to ESA minimums. Notwithstanding this rare Ontario decision in favour of employers, it is important to regularly review and update employment agreements to ensure termination provisions are enforceable.

Canada Labour Code changes

On 20 June 2025, new federal legislation came into force. Bill C-58 amended the Canada Labour Code to restrict federally regulated employers from using replacement workers – commonly known as "scabs" – to perform the duties of unionised employees during a legal strike or lockout. Employers can no longer use external replacement workers (hired to replace unionised staff during a strike or lockout) or internal workers (including new hires or existing non-union staff) to cross picket lines and take over bargaining unit duties. Managers cannot fill in unless the work is part of their regular duties.

Bill C-58 also expedited the process for maintenance of activities agreements between employers and unions (the "parties") by removing certain notice requirements. Maintenance of activities applies when the cessation of work during a strike or lockout would result in immediate or serious danger to the public's health or safety. The parties must come to an agreement on maintenance of activities within 15 days from the notice to bargain. If an agreement is reached, it must be immediately filed with the Minister of Labour and the Canadian Industrial Relations Board (CIRB). If the parties agree no activities must be maintained, that agreement must also be filed with the Ministry of Labour and CIRB. If no agreement is reached, either party may apply to the CIRB for a determination on maintenance of activities issues. The CIRB must then issue a decision within 82 days of that application.

British Columbia expansion of pay transparency requirements

The British Columbia Government's Pay Transparency Act became law on 11 May 2023, and required employers, inter alia, to prepare a pay transparency report by 1 November of each year. In 2025, the pay transparency report requirement expanded to all employers with 300 or more employees in British Columbia. The report is due on 1 November 2025.

Nova Scotia's Stronger Workplaces for Nova Scotia Act

On 20 September 2024, Nova Scotia's Stronger Workplaces for Nova Scotia Act, which amended the Worker's Compensation Act, the Occupational Health and Safety Act, and the Labour Standards Code, received

Royal Assent. Effective 15 July 2025, the Worker's Compensation Act includes additional duties for both employers and employees regarding the early and safe return to work of injured workers. These duties include the requirement to:

- for employers and workers, get in contact as soon as practicable after the injury occurs and maintain communication through the recovery period and impairment;
- for employers, attempt to provide suitable work that is available which, where possible, restores the worker's pre-injury earnings;
- for workers, assist the employer to identify suitable work that is available which, where possible, restores the worker's pre-injury earnings; and
- for employers and workers, provide the Worker's Compensation Board of Nova Scotia such information as the Board may request concerning the worker's return to work.

Effective 1 September 2025, the Occupational Health and Safety Act will include psychological health and safety in the definition of "health and safety". Employers will be required to establish policies to prevent workplace harassment.

Federal pay equity

Once Federally regulated employers subject to the Pay Equity Act (private or public sector employers with an average of ten employees) have posted a pay equity plan, they must file an annual statement with the Office of the Pay Equity Commissioner. For most employers, the first annual statement was due 30 June 2025. The annual statement must contain basic information about the employer and its pay equity plan. The collection of this information will help the Office of the Pay Equity Commissioner better measure the gender wage gap and the impact of the Act and its Regulations.

Conclusion

Looking ahead, employers should continue to monitor legislative changes shaping the employment relationship. At the same time, courts continue to scrutinise termination provisions. Drafting a clear, unambiguous, and legally compliant termination provision remains a valuable strategy for employers. Staying proactive on both fronts helps employers reduce liability and maintain enforceable employment agreements.

CHILE



Law and Practice

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SCR Abogados is a mid-sized boutique Chilean law firm founded in 2017 offering legal services in corporate, employment, intellectual property, data privacy, compliance and other related practice areas, focusing on best-fit solutions for clients' needs while delivering high-quality legal services and creating long-term client relationships. Based in Santiago, SCR

Abogados' value proposition consists of assigning seasoned lawyers with practical knowledge to each task in order to deliver a timely, complete, high-quality and business-oriented solution for the benefit of clients. The firm's client base ranges from individuals and start-ups to publicly traded companies and Fortune 500 companies in several industries.

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1. Employment Terms

1.1 Employee Status

There is no distinction between blue-collar and white-collar workers in Chile.

1.2 Employment Contracts

Although an employment contract may be deemed to exist without a written agreement, the employment statute requires that contracts must be in writing. Employment contracts must be signed by both the employer and the employee.

An employer must ensure that there is a written agreement in place within 15 days counted from the date on which the employee starts working (five days in the case of contracts with a term of less than 30 days). The agreement should be registered at the Labour Bureau website within 15 days, or the employer will face a fine. Absence of a written employment agreement will result in a fine and a presumption in favour of the employee: the terms of the employment contract will be understood to be those indicated by the employee (unless the employer can prove otherwise).

Employment contracts must contain the following statutory provisions:

- place and date of the contract;
- identification of the parties, including nationality, address, email, and the worker's date of birth and date of employment;
- description of the nature of the services and the location or city where they are to be performed

- the contract may specify two or more specific duties, whether alternative or supplementary;
- amount, method and frequency of payment of the agreed remuneration;
- duration and distribution of the working hours, except in the case of shift systems, in which case working hours must be regulated in the internal regulations;
- term of the contract;
- any other agreements between the parties (eg, other monetary benefits);
- additional benefits provided by the employer, such as housing, electricity, fuel, food, or other in-kind benefits or services; and
- when a worker is required to change residence for employment, the place of origin must be recorded.

The employer must retain a physical (hard) copy of all employment-related documentation for each employee. The retention period shall correspond to the statutory limitation period applicable to employment-related claims.

Open-ended employment contracts are the general rule, although fixed-term contracts and contracts to perform a particular task or service (that is, task- or project-based contracts) are permitted. All employment contracts must state their term and, unless the contract is explicitly for a fixed term or to perform a particular task or service, the term is considered to be open-ended.

For most employees, the duration of a fixed-term contract must not exceed one year. A fixed-term contract

may be renewed once, but the total duration, including the renewal, must not exceed one year. In the case of managers and employees with a professional or technical qualification from a higher-education institution, a fixed-term contract may have a duration of up to two years. Again, one renewal is permitted but the total duration, including that of the renewal, must not exceed of two years.

If an employee works non-continuously for the same employer under more than one fixed-term contract for a period of 12 months or more within a 15-month period (starting at the beginning of the first contract), the employee is considered to have an open-ended contract with the employer. An employee on a fixed-term contract is also considered to have an open-ended contract with the employer if: (i) the employee continues to work for the employer (with the employer's knowledge) after the end of the term of the fixed-term contract; or (ii) the contract is renewed more than once.

1.3 Working Hours

The general rule is that the statutory maximum working hours per week is currently 44 hours, which may be distributed over no more than six days and no fewer than five days, with a daily limit of ten working hours. Employers are required to maintain a system for recording each employee's working hours.

These limitations shall not apply to:

- managers, administrators and legal representatives vested with managerial authority;
- individuals who, due to the nature of their duties, perform their work without immediate supervision; and
- employees engaged in work on board fishing vessels.

Such employees are not required to sign the daily attendance registry, and their exemption must be expressly stipulated in their employment contracts. Moreover, the 44-hour weekly limit may be extended under specific and exceptional circumstances provided for by law, and additional shifts may be authorised for roles which, due to their nature, must operate on a continuous basis.

Only employees subject to a working schedule are entitled to overtime payments. An employee will have worked overtime if their worked hours during a week exceed the agreed working hours or the legal maximum hours per week, whichever is lower. Overtime hours must be paid with a 50% surcharge together with the employee's salary.

As of April 2024, maximum working hours will be gradually reduced until reaching a maximum of 40 hours per week by the year 2028. The new work schedule allows the distribution of the weekly maximum over four days, compensation of overtime with periods of rest and the distribution of the monthly work schedule in weekly averages of 40 hours, among other alternatives.

Part-time employment contracts are those in which the employee works no more than 30 hours per week. Part-time employment contracts are subject to the general rules set forth in the Labour Code, except in respect of Minimum Monthly Income (to be calculated proportionally, as it is based on a standard workweek), Statutory Profit Sharing (the maximum cap of 4.75 times the monthly minimum wage may be reduced proportionally according to the ratio between the hours agreed in the part-time contract and those of a full-time ordinary workweek) and severance per years of service (a special method is used to calculate this indemnity).

Working mothers and fathers of children up to 12 years of age, as well as those who have the personal care of such children, shall be entitled, in so far as their duties allow, to a flexible daily period of two hours in total, within which they may advance or delay the start of their work by up to one hour, thereby also determining the end-of-day departure time.

Special rules apply to some aspects of the working time of employees in specific sectors such as retail, hotels and restaurants, public transport and fishing. Additionally, special distribution systems may be authorised depending on the specific characteristics of the worksite.

1.4 Compensation

The following employee compensations are prescribed by law.

- Monthly minimum wage – There is a statutory national minimum income, which is set as a monthly amount depending on the employee's age, that increases by law generally once or twice a year.
 - (a) As of 1 May 2025, the monthly minimum wage for employees over 18 and up to 65 years of age is set at CLP529,000. As of 1 January 2026, the monthly minimum wage for the aforementioned employees will increase to CLP539,000. The statutory minimum wage is not applicable to apprentices.
 - (b) As of the same date (1 May 2025), the minimum wage for workers under 18 or over 65 years of age is CLP394,622. As of 1 January 2026, the monthly minimum wage for said workers will rise to CLP402,082.
 - (c) As of 1 May 2025, the minimum income for non-remuneration purposes is set at CLP340,988. As of 1 January 2026, this minimum income will increase to CLP347,434. There are two main rates, depending on the employee's age.
 - (d) Employees subject to a full-time work schedule shall have a monthly base salary that must be at least equal to the relevant statutory minimum wage. Part-time employees must be paid at least the corresponding statutory minimum wage, calculated in proportion to their working hours. Employees that are not subject to a work schedule are entitled to a total monthly remuneration at least equal to the minimum wage.
- “Full Week Payment” (*Semana Corrida*) – Employees who receive variable remuneration accrued on a daily basis, are entitled to receive “full week payment” consisting of the payment of remuneration for the Sundays and holidays not worked during the same week based on the average of daily variable remuneration accrued for the said week. Additionally, when an employee receives base salary and variable monthly remuneration, they are entitled to receive a “full week payment” consisting of a payment of variable remuneration corresponding to Sundays and holidays not worked based on the average of the variable remuneration accrued during the corresponding week.
- Profit-sharing – Part of the company's profits should be distributed by the company among its employees. There are three alternatives to comply with this legal obligation.
 - (a) Statutory profit-sharing (Article 47 of the Labour Code) – By distributing once each fiscal year among its employees at least 30% of the net profits earned by the employer during that particular year in proportion to their corresponding remunerations.
 - (b) Statutory alternative of Article 50 of the Labour Code – By paying to each employee annually an amount equivalent to 25% of the monthly remuneration accrued during the fiscal year with a limit of 4.75 monthly minimum wages.
 - (c) Conventional profit-sharing – By agreeing with the employees another profit-sharing payment equal or higher than those detailed above.
- Moving to other places – Should the employee change their residency because of the employment contract, the employer must pay reasonable relocation costs.
- Homework expenses – The employer must pay the employee the necessary expenses in the case of homework, including travel expenses when the employee is required to be physically present at the employer's facilities.
- In Chile, there are no mandatory wage adjustments or entitlement to a 13th salary.

1.5 Other Employment Terms

Annual Leave

According to the Labour Code, employees who have completed one year of service with an employer are entitled to 15 working days of fully paid annual vacation. Saturdays, Sundays and public holidays are excluded from the count of working days for these purposes. Employees who work in the southernmost regions of the country are entitled to 20 working days of annual vacation.

Annual leave must generally be taken as a continuous period; however, any vacation days exceeding ten may be split, provided there is mutual agreement between the employer and the employee.

Additionally, employees who have accumulated ten or more years of service – whether with a single employer or across multiple employers – are entitled to one extra vacation day for every additional three years of service beyond the initial ten. For the purpose of determining extra vacation days, only up to ten years of service with previous employers shall be considered.

Other Statutory Special Leave

Other statutory special leaves include the following.

Sick leave

Sick leave must be supported by a medical certificate and promptly communicated to the employer. During such leave, the employee's wage is covered by their corresponding health insurance provider, subject to a statutory monthly cap. In cases of ordinary (non-occupational) illness, there is no annual limit on the number of sick leave days an employee may take.

Parental and family leaves

Employees who give birth are entitled to fully paid maternity leave funded by their health insurance for a period of six weeks preceding the birth (prenatal leave) and 12 weeks following the birth (postnatal leave). Upon the conclusion of postnatal leave, employees may opt for an additional paid parental leave period of either 12 weeks or 18 weeks, contingent, in the latter case, on a return to work on a part-time basis (half-day schedule).

Employees whose spouse or significant other gives birth shall be entitled to five calendar days of paid paternity leave in the event of the birth or adoption of a child.

Employees are further entitled to five consecutive working days of paid leave on the occasion of their marriage or entry into a civil union.

Employees who are breastfeeding or otherwise caring for children under two years of age are entitled to a minimum of one hour of paid leave per working day for such purposes.

Bereavement leaves

In the event of the death of an employee's child, the employee shall be entitled to ten calendar days of paid leave. On the death of an employee's spouse or civil partner, the employee shall be entitled to seven calendar days of paid leave. In the event of the death of a child during gestation, the employee shall be entitled to seven business days of paid leave. On the death of the employee's father, mother or siblings, the employee shall be entitled to three business days of paid leave.

Health-related leaves

Where an employee's child under one year of age suffers from a medical condition, the employee shall be entitled to paid leave for a duration deemed medically necessary, as determined by a physician, with payment covered by the employee's health insurance.

Employees shall be entitled to paid leave equivalent to ten ordinary working days per calendar year, to be utilised in the following circumstances, with the obligation to compensate for the time off at a later date without additional remuneration.

- In the event of a serious accident, or acute and life-threatening illness affecting a child who is older than one year and younger than 18 years of age.
- Where the employee's spouse, civil partner, father or mother is suffering from a serious or terminal illness.
- Where the employee provides personal care to:
 - (a) a minor with a disability registered in the National Register of Disabilities or under six years of age; or
 - (b) an adult over the age of 18 who has an intellectual disability, mental illness or a combination thereof, and who is highly dependent on the employee.

Employees are further entitled to the following paid (subsidised) leaves.

- Up to 15 days to care for a child with a serious medical condition requiring hospitalisation.
- Up to 180 days per calendar year to care for a child diagnosed with cancer. In the subsequent year, the maximum leave period shall be up to 90 days.

- Up to 180 days to care for a child who has undergone an organ transplant.
- Employees are also entitled to half a day of paid leave to receive vaccinations or undergo preventative medical examinations, including but not limited to mammograms and prostate screenings.
- Employees of private health care institutions, pharmacies and pharmaceutical warehouses shall be granted a one-time special leave of 14 business days, which may be taken until 2 February 2026, in recognition of services rendered during the COVID-19 pandemic.
- Parents and legal guardians of children and adolescents diagnosed with autism spectrum disorder are authorised to be absent from work as needed to attend emergencies affecting the well-being of their dependants that occur at their educational institution.

Leave due to voluntary or civic duties

Employees shall be entitled to unpaid leave and shall retain their employment status during periods of mandatory military service or while serving as military reserves. Employees shall be entitled to unpaid leave for the purpose of attending to official union activities (eg, union leaders). Employees shall also be entitled to a minimum of two hours of paid leave on national election day in order to exercise their right to vote.

Employees who are active volunteer members of the fire department shall be entitled to leave during working hours to respond to emergency calls involving fires or accidents. Such time shall be deemed as time effectively worked for all legal purposes.

Employees who have under their care certain minors or persons with any type of disability are entitled in certain cases to special working conditions, such as priority in the use of vacation leave, temporary modification or reduction of the workday during school vacation periods, and the possibility of teleworking. Additionally, a female worker who is victim of attempted femicide may request the temporary adjustment of her work duties for a period of one year from the date of the incident, in order to allow for her proper recovery and protection.

Non-Compete and Confidentiality Clauses

Employment contracts may include specific provisions that impose obligations upon employees, such as non-compete and confidentiality clauses. These obligations are enforceable for the duration of the employment relationship, and any breach thereof may give rise to summary dismissal without severance compensation. However, such provisions must not infringe upon the employee's fundamental or constitutional rights, including:

- the freedom to work;
- the right to engage in economic activity;
- the right to privacy; and
- the right to be free from arbitrary or discriminatory treatment.

For such obligations to be valid, they must be reasonable, necessary and proportionate to the legitimate aim pursued, in such a manner that they do not breach the employee's above-mentioned fundamental or constitutional rights, among others. (See also 2.1 **Non-Competes**.)

2. Restrictive Covenants

2.1 Non-Competes

An employer and employee may agree upon a non-compete covenant. Such covenant shall be enforceable during the term of the employment relationship, and any breach thereof may constitute a material violation of the employee's contractual obligations. Under Chilean law, non-compete covenants applicable during the course of the employment relationship are expressly recognised. Engaging in competing activities may constitute just cause for termination without severance, provided that a specific prohibition has been clearly established in the employment contract.

Post-termination non-compete clauses, however, are not expressly regulated by statute. Historically, Chilean administrative and judicial authorities have tended to consider such clauses as unenforceable on the grounds that they infringe upon the employee's constitutional freedom to work and to pursue any lawful economic activity. Notwithstanding the foregoing,

judicial decisions have upheld the enforceability of post-contractual non-compete agreements, provided they meet the following criteria:

- narrowly tailored to the employer's specific line of business;
- limited in time and geographic scope, with durations not exceeding 12 or 24 months following the termination of the employment agreement;
- include fair financial compensation in exchange for the non-compete obligation; and
- restricted to key employees whose roles are critical to the business.

This list is neither exhaustive nor definitive, and future judicial rulings may modify these standards or introduce additional requirements. Accordingly, compliance with these elements does not guarantee enforceability, as courts may still declare the provision void and unenforceable. Conversely, a non-compete clause may be upheld even if not all of these conditions are fully satisfied.

2.2 Non-Solicits

Non-solicitation covenants are not expressly regulated by law, and there is no established judicial criterion regarding their enforceability. Nonetheless, under general legal principles, an employer may agree with an employee to include a non-solicitation obligation. The enforceability of such a provision – whether during or after the termination of the employment relationship – shall be assessed based on its necessity, proportionality and, where applicable, the existence of adequate compensation.

It is understood, however, that a breach of such obligation shall not invalidate the resignation of the employee or the client, nor shall it limit their subsequent engagement by a new employer.

3. Data Privacy

3.1 Data Privacy Law and Employment

Pursuant to employment legislation, employers are under a legal obligation to maintain the confidentiality of all personal information and data pertaining to employees that they access during the course of the

employment relationship. Moreover, general data protection regulations are fully applicable in the employment setting. These rules govern the collection, processing and storage of personal data – defined as any information relating to an identified or identifiable individual – within databases and registries.

The primary data protection obligations applicable to employers in the employment context include the following.

Lawful Basis and Informed Consent

As a general principle, employers may collect and process personal data only where expressly authorised by statute or with the written and informed consent of the employee or job applicant. Prior to providing such consent – which may be revoked at any time – the individual must be informed of the intended purpose of data processing and whether the data will be shared with third parties. Certain exceptions apply: for example, consent is not required when processing data that is publicly accessible or relates to general information such as name, date of birth, address, educational background, and occupation. Consent is also not required when a private employer processes personal data strictly for internal purposes.

Sensitive Data Restrictions

Sensitive personal data is subject to enhanced protection. It is defined as data concerning an individual's:

- physical or moral characteristics;
- private life;
- personal habits;
- racial or ethnic origin;
- political opinions;
- religious or philosophical beliefs;
- health status (physical or mental); or
- sexual life.

The collection and processing of such data is permitted only with explicit legal authorisation or the express consent of the individual concerned, except where the data is required for the provision of health-related benefits.

Purpose Limitation and Data Accuracy

Personal data that is not sourced from public registers may be used solely for the specific purposes for which it was collected. Employers are required to ensure that such data remains accurate and up to date. Data must be deleted when it becomes outdated or when the legal basis for its retention no longer exists. Inaccurate, ambiguous or incomplete data must be corrected or clarified.

Data Security and Confidentiality

Employers are responsible for implementing appropriate security measures to protect personal data. Employees who handle personal data are bound by confidentiality obligations, which remain in effect even after the termination of their employment.

Data Subject Rights

Employees and job applicants have the right to request from the employer access to their personal data, including information about the source, purpose of processing, and any third-party disclosures. They are also entitled to request the deletion, correction or blocking of data that is unlawfully held or inaccurate.

Workplace Monitoring

Any mechanisms used by employers to monitor employee conduct in the workplace must be proportionate, general in nature and impersonal, in line with the nature of the employment relationship and with respect for employee's dignity. The use of audiovisual surveillance systems is lawful only when justified by technical requirements of the production process or for legitimate safety reasons.

4. Foreign Workers

4.1 Limitations on Foreign Workers

In companies employing more than 25 individuals, no less than 85% of the workforce must be comprised of Chilean nationals or foreign nationals who meet at least one of the following criteria:

- they have legally resided in Chile for a continuous period of five years or more;

- they are legally married to, or are parties to a civil union with, Chilean nationals, or are the widows or widowers of Chilean nationals; or
- they are the parents of children who are Chilean nationals.

This nationality requirement shall not apply to foreign nationals classified as experts.

Furthermore, foreign nationals must obtain either a temporary residence permit or a special short-term work authorisation as a tourist in order to lawfully engage in remunerated employment activities in Chile.

4.2 Registration Requirements for Foreign Workers

Once the foreign worker has obtained the corresponding residence or work permit, they shall be subject to the general legal framework applicable to employment relationships. Accordingly, their employment contract and other related labour documentation must be registered at the Labour Bureau in the same manner as for any Chilean national.

5. New Work

5.1 Mobile Work

The provision of services under a remote work or teleworking arrangement may be either full or part time. Such services may be rendered from a location freely chosen by the employee or from a specific place such as the employee's home. Remote work requires a written agreement, the minimum content of which is governed by statute. Said agreement must include at least the following:

- the type of remote work or telework and whether it is full-time or part-time work;
- in the case of part-time telework, the method for alternating between in-person and remote work;
- the location(s) from which telework will be performed;
- the duration of the agreement;
- the mechanisms for monitoring and supervision to be used by the employer;
- the duration and distribution of the workday; and

- the minimum disconnection period for workers not subject to a weekly working hours limit.

Although privacy protection is not a legally required element of the agreement, there is no legal restriction preventing the parties from including such provisions in the contract. The remote work or telework agreement must be registered with the Labour Bureau within 15 calendar days from its execution.

If the remote work or teleworking arrangement is agreed upon after the employment relationship has begun, either party may unilaterally revert to the originally agreed in-person work modality, by providing no less than 30 days' prior written notice to the other party. Conversely, if the employment relationship was initially established under a remote work or teleworking arrangement, any change to an in-person work modality shall require the mutual written consent of both parties.

Throughout the period in which services are rendered under a remote work or teleworking arrangement, the employer shall retain its obligation to ensure the health and safety of the employee. If telework is performed at a specific location, the employer must ensure that the applicable health and safety standards are met. The employer may not enter the employee's residence or any third-party premises where services are rendered without the prior authorisation of the employee or the relevant third party, as applicable.

All equipment, tools and materials required for teleworking – including personal protective equipment – must be provided by the employer. Additionally, the employer must pay the employee the necessary expenses in the case of homework, including travel expenses when the employee is required to be physically present at the employer's facilities.

Remote workers are entitled to the full scope of individual and collective rights set forth in the Labour Code (including social security coverage), except to the extent that such rights are incompatible with the specific provisions applicable to remote work or telework. Furthermore, remote workers shall at all times have the right to access the employer's premises. The employer must guarantee the employee's participa-

tion in collective activities held at the workplace and shall bear all related transportation costs when presence on site is required.

In certain circumstances, the provision of services under a teleworking arrangement may be mandatory for workers who are responsible for the personal care of (i) a child under 14 years of age or (ii) a person with a disability or in a situation of severe or moderate dependency, regardless of their age, provided that they do not receive remuneration for such care.

5.2 Sabbaticals

Chilean legislation does not expressly regulate the possibility of sabbatical leaves. However, there is no legal impediment for the parties to agree upon such leave in writing. During the period in which the employment contract is suspended due to a sabbatical leave, the employee continues to accrue time-based employment benefits, such as annual leave and severance per years of service.

5.3 Other New Manifestations

While, in practice, new work arrangements such as desk sharing are in use, such arrangements are not specifically regulated under Chilean law.

6. Collective Relations

6.1 Unions

The Constitution recognises unions as legal entities and guarantees employees the right to freely form, join, refrain from joining or withdraw from a union. The Labour Code affirms the right of employees to establish union organisations without prior authorisation, provided such organisations are formed in accordance with applicable laws and their respective governing statutes.

Membership to a union is entirely voluntary.

6.2 Employee Representative Bodies

The primary function of a union is to represent its members in the implementation and enforcement of both individual and collective employment contracts or agreements. Additionally, unions act on behalf of

their members in collective bargaining processes and provide support in matters related to:

- labour and safety law compliance;
- mutual assistance and welfare;
- occupational health and safety;
- professional development; and
- recreational initiatives.

6.3 Collective Bargaining Agreements

Under Chilean law, collective bargaining is defined as the process through which one or more employers engage in negotiations with one or more unions with the objective of establishing uniform terms and conditions of employment and remuneration for a defined period. Such bargaining may take place at either the single-employer or multi-employer level. In the latter case, employers must grant their express prior consent to participate.

Collective bargaining may address all matters related to wages and other forms of remuneration, whether monetary or in-kind, as well as general working conditions. However, it may not extend to matters that would restrict the employer's managerial prerogatives or matters unrelated to the employer(s) involved in the negotiation.

Two types of collective bargaining are recognised.

- Regulated collective bargaining, which is subject to detailed statutory procedures and confers specific rights and obligations upon the parties.
- Unregulated collective bargaining, which is carried out voluntarily by the parties without the procedural framework or statutory protections afforded to regulated bargaining. Importantly, industrial action (eg, strikes) is not permitted in the context of unregulated bargaining.

At the single-employer level, any duly constituted union at the company or establishment level may initiate a regulated collective bargaining process by submitting a proposed draft of a collective contract. In such cases, the employer is legally required to enter into negotiations.

The regulated bargaining process is governed by statutory timelines. Generally, negotiations must conclude within 45 days from the submission of the draft collective contract or from the expiration of a prior agreement. If no agreement is reached by the deadline, employees are typically required to vote on whether to accept the employer's final proposal or to proceed with a lawful strike. The Labour Bureau must be kept informed throughout the process.

Multi-employer collective bargaining follows a similar procedural framework, although, in contrast to single-employer bargaining, participation by employers is entirely voluntary and cannot be compelled.

During the course of regulated bargaining, either party may request mediation services or voluntarily submit the dispute to arbitration. If arbitration is agreed upon or mandated (as in the case of prohibited industrial action), the resulting arbitral award has the same legal effect as a collective contract. Arbitration is compulsory in enterprises where strikes are legally prohibited and employees have been ordered to resume work by government authorities.

Employees actively engaged in regulated collective bargaining are afforded special protection against dismissal. Generally, they may only be terminated for serious misconduct or material breach of contract, and only with prior judicial authorisation.

As previously noted, parties may freely engage in unregulated collective bargaining outside the statutory framework. No procedural rules or protections apply in this context – employees involved are not afforded dismissal protections, and lawful strike is not permitted. The outcome of such bargaining is referred to as a collective agreement, as opposed to a collective contract, which arises from regulated bargaining.

Collective contracts and arbitration awards must have a minimum duration of two years and may not exceed three years. Collective agreements may have a duration of up to three years.

The provisions of collective contracts, collective agreements or arbitration awards automatically become binding terms of the individual employment

contracts of the employees covered. These terms generally continue to apply even after the expiration of the collective instrument, with some exceptions. An individual employment contract may not stipulate remuneration or benefits inferior to those established in any applicable collective contract, agreement or award.

Collective instruments may not do the following:

- waive or amend employees' statutory minimum rights;
- include clauses that require union membership as a condition of employment;
- mandate union affiliation by non-members within a certain period after hire; or
- limit the hiring of non-union members.

Application of collectively negotiated benefits to non-union employees who participated in the bargaining process requires:

- the union's consent;
- the employee's express acceptance; and
- the payment of all or part of the union's standard monthly membership dues during the application of the collective benefits.

The employer is responsible for deducting such payments from the employee's wages and remitting them to the relevant union.

7. Termination

7.1 Grounds for Termination

Under Chilean labour legislation, employment contracts may be terminated solely on grounds expressly established by law, all of which must be duly justified. A key legal distinction exists between termination grounds that entitle the employee to severance compensation and those that do not.

Employees are not entitled to severance compensation when their dismissal is based on just cause, such as serious misconduct or material breach of contractual obligations. Likewise, no compensation is due

when termination occurs for reasons not attributable to the employee, including:

- mutual agreement between the parties;
- resignation by the employee;
- death of the employee;
- expiration of a fixed-term contract;
- completion of a task-specific or service-specific contract; or
- events constituting force majeure or acts of God.

It should be noted that, for legal purposes, the expiration of fixed-term or task-specific contracts, as well as termination due to force majeure, are deemed terminations initiated by the employer.

Only three termination scenarios give rise to severance compensation, all involving employer-initiated dismissal:

- business needs (operational or economic grounds) – typically understood as redundancy;
- termination at will – without cause, applicable only to specific categories of employees such as executives and senior managerial personnel; and
- employer bankruptcy.

In these cases, employees with at least one year of continuous service are entitled to legal severance pay – unless a superior contractual severance amount has been agreed. The statutory severance is calculated at the rate of 30 days of the employee's last monthly remuneration per year of service, including any fraction exceeding six months. This severance is subject to the following statutory caps:

- a monthly salary cap of 90 Unidades de Fomento (UF); and
- a maximum of 11 years of service (equivalent to 330 days of severance pay) (this seniority cap does not apply to employees hired before 14 August 1981).

When severance compensation is owed, the employer must either provide advance notice of dismissal – of at least 30 days – or pay in lieu thereof. However, such notice is not required in cases where termination is based on just cause or upon completion of

fixed-term or task-specific contracts. For contracts concluded for specific tasks or services, severance upon completion is calculated at a rate of 1 to 2.5 days of remuneration per month worked (or per fraction exceeding 15 days), depending on the effective start date of the agreement.

Employees may resign voluntarily at any time, provided they give the employer at least 30 days' prior written notice. In cases of serious breach of contract by the employer, the employee may unilaterally terminate the employment contract without prior notice and seek judicial redress for what is known as "constructive dismissal" (or indirect termination).

With regard to retirement, the statutory age for claiming a retirement pension is 65 years for men and 60 years for women. Employees are not legally required to retire upon reaching this age and may continue working while deferring or receiving their pension. Employers are not permitted to terminate an employment contract solely on the basis of the employee reaching retirement age, as doing so may constitute unlawful age-based discrimination. Further, the employee may claim retirement pension and continue working, as retirement is not a legal cause for termination.

In all termination scenarios, regardless of the reason, the employer is legally obligated to pay any outstanding or proportionally accrued vacation days.

There are no specific legal provisions governing collective dismissals. These cases are subject to the general rules applicable to individual terminations.

7.2 Notice Periods

Where an employer terminates the employment contract on the grounds of business needs (primarily redundancy) or under the at-will termination mechanism applicable to managerial or similar personnel (without cause), it is legally obligated to either:

- provide the employee with at least 30 calendar days' prior written notice; or
- pay the employee an amount equivalent to thirty days' remuneration in lieu of notice.

In both scenarios, employees with one year or more of continuous service are also entitled to the statutory severance payment for years of service. Payment in lieu of prior notice and per years of service is also mandatory in case of termination due to the employer's bankruptcy.

For all other forms of employer-initiated termination, no advance notice period is required. However, the employer must still provide written notice of termination specifying the applicable legal ground and its justification.

When an employee resigns voluntarily, a minimum of 30 calendar days' written notice must be given to the employer. Nevertheless, in cases involving serious contractual breaches by the employer, the employee may terminate the contract immediately and initiate legal proceedings seeking compensation. This is known as constructive dismissal (*despido indirecto*).

Irrespective of the cause of termination, the employer is required to deliver a termination letter to the employee that clearly:

- sets out the statutory grounds relied upon and the justification;
- states the amount of severance compensation, if applicable;
- certifies the status of all social security contributions made during the employment relationship, accompanied by proof of payments; and
- indicates whether the release and settlement agreement (*finiquito*) will be executed electronically or in person, and notifies the employee of their right to reserve claims upon signing.

This letter must be delivered personally to the employee or sent via registered mail within the statutory deadlines – ranging from the same day to three or six days, depending on the legal ground for dismissal. A copy must also be submitted to the Labour Bureau.

The settlement or release agreement and corresponding payments due upon termination must be made available to the employee within ten calendar days from the effective termination date. The settlement or release agreement must be executed and ratified

before a notary public or other competent certifying officer (*ministro de fe*).

7.3 Dismissal for (Serious) Cause

An employer may lawfully terminate an employment contract without notice or severance compensation where the dismissal is based on a legally recognised cause constituting serious misconduct or contractual breach by the employee. Such grounds are as follows.

- The commission of a serious and duly substantiated act of misconduct, such as:
 - (a) dishonesty or fraud in the performance of employment duties;
 - (b) acts of sexual harassment;
 - (c) use of physical violence against the employer or co-workers;
 - (d) insulting or offensive conduct towards the employer;
 - (e) immoral behaviour that adversely affects the company or its reputation; and
 - (f) workplace harassment.
- Engaging in activities that compete with the employer's business, where expressly prohibited under the employment contract.
- Unjustified absences, including:
 - (a) two consecutive days of unexcused absence;
 - (b) absence on two Mondays within the same calendar month; or
 - (c) a total of three unexcused absences in any given month.
- Absence without justification or prior notice by employees who are responsible for tasks, operations or machinery whose interruption would materially impact the company's operations.
- Abandonment of duties, defined as:
 - (a) leaving the workplace abruptly during working hours without cause or permission; or
 - (b) refusal without justification to perform the duties set forth in the employment contract.
- Acts or omissions involving gross negligence or recklessness that endanger:
 - (a) the safety or operation of the establishment; or
 - (b) the health or safety of co-workers.
- Intentional damage to the employer's infrastructure, machinery, equipment, tools, materials or goods.

- Any other serious breach of the employee's contractual obligations.

Although the employer is not obligated to pay severance or provide advance notice under these grounds, it must still comply with statutory formalities. Specifically, the employer must deliver a written notice of termination, clearly identifying the statutory ground relied upon and describing the underlying facts that substantiate the cause for dismissal.

7.4 Termination Agreements

An employment relationship may be lawfully terminated by mutual consent of the parties. To be valid and enforceable, such agreement must be executed in writing and must be signed and ratified by the employee before a notary public or another legally authorised certifying officer (*ministro de fe*).

7.5 Protected Categories of Employee

The Chilean Labour Code provides special dismissal protections – commonly referred to as *fuero laboral* – to certain categories of employees for a specified period of time. During such protected periods, affected employees may only be dismissed with the prior authorisation of a competent labour court, and solely on limited grounds expressly established by law.

These protections apply to:

- union leaders;
- employees actively participating in collective bargaining proceedings;
- employees involved in the process of forming a union;
- pregnant employees, including during maternity leave and for a period of one year following the conclusion of postnatal leave;
- designated employee representatives on health and safety committees;
- employees whose child has died;
- employees exercising their right to paternity leave; and
- victims of attempted femicide.

As an exception, in the event of the permanent closure of the employer's business operations, the employment contracts of union representatives and

the employee representative at the safety committee (*comités paritarios*) may be lawfully terminated without prior court approval.

In addition, an employee who is on medical leave (*licencia médica*) may not be dismissed on the grounds of business necessity or through at-will termination mechanisms for the duration of such leave. An employee's illness is not rightful ground for dismissal.

Finally, dismissals based on discriminatory motives are strictly prohibited. This includes, in particular, any termination based on protected characteristics such as:

- race;
- colour;
- sex;
- gender;
- maternity;
- breastfeeding, nursing;
- age;
- marital status;
- union affiliation;
- religion;
- political opinion;
- nationality;
- national origin;
- socio-economic status;
- language;
- beliefs;
- participation in professional associations;
- sexual orientation;
- gender identity;
- parentage;
- personal appearance;
- illness or disability (including especially cancer);
- social origin; or
- any other reason intended to nullify or alter equality of opportunity or treatment in employment and occupation.

(See also 8.2 Anti-Discrimination.)

8. Disputes

8.1 Wrongful Dismissal

Judicial Review of Unlawful or Unfair Dismissals

If an employee considers that the termination of their employment contract was unjustified, unfair or without legal cause, they may initiate a legal claim before the competent Labour Court. This action must generally be filed within 60 working days from the date of termination. The 60-day limitation period to file a claim may be extended to a maximum of 90 working days if the employee first requests intervention by the Labour Bureau before filing suit and only for the number of days the process was active before the bureau.

If the court rules in favour of the employee, it may award compensation (as reinstatement is only available in limited, legally defined circumstances). Compensation generally includes:

- payment in lieu of statutory notice (one month's remuneration); and
- legal severance for years of service, as would apply in dismissals due to business necessity or at-will termination. (Special rules apply to fixed-term or task employment agreements.)

In addition, the court shall increase the severance per years of service payment between 30% and 100% surcharge based on the circumstances of the unlawful dismissal. All court-ordered compensation is adjusted for inflation and accrues legal interest from the date of termination to the date of payment.

Labour Protection Procedure for Discriminatory or Retaliatory Dismissals

Employees who believe they have been dismissed due to unlawful discrimination or in violation of fundamental rights may initiate a claim under the Special Labour Protection Procedure (*Tutela Laboral*). This mechanism also applies to dismissals resulting from:

- anti-union retaliation;
- unfair labour practices; or
- acts of victimisation following the exercise of legal labour rights.

If the court determines that a fundamental right has been violated, it may:

- impose a fine on the employer;
- order the employer to cease the unlawful conduct; and
- require corrective or remedial measures to mitigate the harm caused.

In addition to standard compensation for unfair dismissal, the court may award supplemental compensation ranging from six to 11 months' salary, depending on the severity of the violation. Additionally, the ruling will be registered at the Labour Bureau and the employer may be barred from contracting with the state administration for a period of up to two years.

In cases involving serious discrimination or anti-union practices, the employee may elect between receiving compensation and being reinstated to their previous position. Reinstatement is also available upon request in cases involving:

- dismissals of employees protected by statutory dismissal protection (*fuero laboral*); or
- dismissal of union members resulting from unfair anti-union conduct by the employer.

8.2 Anti-Discrimination

The Chilean Constitution prohibits discrimination on any grounds other than an individual's personal merit and suitability for a given role. It also enshrines the right to respect for privacy and personal honour.

The Labour Code declares unlawful any exclusionary or preferential treatment in employment that has the purpose or effect of impairing or nullifying equality of opportunity or treatment. This includes discrimination based on, *inter alia*:

- race;
- skin colour;
- sex;
- maternity;
- breastfeeding or nursing status;
- age;
- marital status;
- union membership or activity;

- religion;
- political opinion;
- nationality;
- national origin;
- socio-economic status;
- language;
- beliefs;
- participation in union organisations;
- sexual orientation;
- gender identity;
- affiliation;
- physical appearance;
- illness or disability (including especially cancer); or
- social origin.

Job advertisements issued by employers – whether directly or through third parties – are deemed discriminatory when they establish any of the above characteristics as conditions or requirements for applying.

The Labour Code provides a judicial remedy enabling employees to bring legal action against their employer where the employee's fundamental rights are infringed, whether during the course of employment or in the context of termination.

In addition, the Anti-Discrimination Act defines arbitrary discrimination as any unjustified distinction, exclusion or restriction – whether imposed by public authorities or private individuals – that results in deprivation, disturbance or threat to the legitimate exercise of fundamental rights guaranteed by the Constitution or international human rights treaties ratified and in force in Chile. This definition is particularly applicable to actions based on:

- race or ethnicity;
- nationality;
- socio-economic status;
- language;
- ideology or political opinion;
- religion or belief;
- union membership or lack thereof;
- sex, maternity or breastfeeding status;
- sexual orientation;
- gender identity or expression;
- marital status, age, affiliation, personal appearance, illness or disability.

Moreover, the Labour Code provides specific legal protection against workplace sexual harassment and moral (labour) harassment. Where such conduct is duly substantiated, it constitutes valid cause for termination of the employment contract without severance compensation.

8.3 Digitalisation

In Chile, judicial proceedings have been conducted electronically since the enactment of Law No 20,886 in 2015. Pursuant to this law, judicial rulings and procedural acts are required to be recorded in the Judiciary's electronic system and prosecution platform.

Furthermore, Law No 21,394, effective as of 2021, governs the possibility for labour judges to authorise the remote appearance of any party to hearings via videoconference, provided that the attorneys possess the appropriate means to do so. For such purposes, the interested party must file a request with the court to appear remotely at least two days prior to the scheduled hearing date, providing a reliable means of contact.

Nevertheless, confessional evidence, expert and witness testimony, and any other procedural acts as determined by the judge, in principle, may only be rendered within the physical premises of the court.

9. Dispute Resolution

9.1 Litigation

In Chile, there are specialised courts for resolving labour disputes (Labour Courts) as well as specialised courts for labour and social security collection matters (Labour and Social Security Collection Courts).

The filing of collective claims is permitted. Additionally, if multiple claims against the same defendant are being processed before the same Labour Court and the legal actions are identical, the judge may order the consolidation of the cases provided they are at the same procedural stage.

Class actions are not admissible in labour disputes in Chile.

Regarding representation before the court, it is required that parties appear with the sponsorship and representation of a duly authorised attorney.

9.2 Alternative Dispute Resolution

Employment-related disputes fall under the jurisdiction of the Labour Courts or the Labour Bureau, which are the competent authorities for their resolution. Arbitration proceedings, however, are limited in scope and may only be invoked in specific cases arising within the context of collective bargaining.

9.3 Costs

If the employee or employer is entirely unsuccessful in a trial or in an incidental proceeding, they may be ordered by the Court to pay personal costs arising from attorneys' fees, and other participants' fees, in addition to court costs, as determined by the Court.

CHINA

Law and Practice

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King & Wood Mallesons is a leading law firm with exceptional legal expertise and depth of knowledge. The firm provides comprehensive one-stop legal solutions to clients in China as well as internationally. The labour and employment department has seven partners and more than 20 attorneys and assistants based in Beijing, Shanghai, Shenzhen, Guangzhou, Suzhou and Haikou, enabling them to quickly and effectively resolve labour law issues across Mainland China. The firm has provided legal services to

more than 300 Fortune 500 companies, multinational companies, large state-owned enterprises and well-known domestic enterprises. Its extensive experience in handling both adversarial and non-adversarial matters, and its direct participation in legislation, facilitate a deep and accurate understanding of the complicated and rapid changes in PRC labour and employment laws and policies, as well as the latest HR, management and employment issues.

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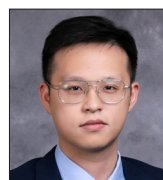
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1. Employment Terms

1.1 Employee Status

There is no clear distinction between blue-collar and white-collar workers under PRC employment laws. Workers uniformly hold the status of “employees” as protected by PRC employment laws, as long as they are employed by enterprises, individual economic organisations, private non-enterprise entities, state organs, public institutions or social organisations within the boundary of the PRC, no matter whether they are employed as senior staff or frontline workers.

Under the current PRC employment laws, employees can generally be divided into directly employed employees and labour dispatched employees.

- Directly employed employees can be further divided into full-time employees and part-time employees, with full-time employment being the most common form of employment. Part-time employees do not work more than four hours on average per day and 24 hours per week for one employer; they can work for more than one employer simultaneously.
- Labour dispatched employees are employed by a dispatch agency and then seconded to work for a company, under an indirect employment arrangement. Labour dispatch applies to temporary, auxiliary or substitutable positions, and the law stipulates that the ratio of the number of dispatched employees versus the number of total employees (direct hires plus dispatched employees) of the

company shall not exceed 10%, unless otherwise provided by law.

1.2 Employment Contracts

According to the PRC Employment Contract Law (the “Employment Contract Law”), there are three types of employment contract terms:

- a fixed-term contract;
- an open-ended contract; and
- a project-based contract expiring at the completion of a specific task or project.

A written employment contract shall be entered into within one month from the date on which the employee commences work; otherwise, the employer shall pay twice the monthly salary to the employee from the second month of the commencement of employment until the date when a written employment contract is concluded. If an employer still fails to conclude a written employment contract after a year from the commencement of the employment, an open-ended employment contract will be deemed automatically concluded between the employer and the employee.

The following information must be included in an employment contract:

- the employer’s name, address and legal representative/person in charge;
- the employee’s name and home address, and the number of his/her valid identification card;
- the term of the employment contract;

- the job description and the work location;
- the working hours, rest time and leaves;
- remuneration;
- social insurance;
- labour protection, working conditions and protection against occupational hazards; and
- specific provisions on the protection of the rights and interests of female employees.

Part-time employees may enter into oral agreements with the employer. The employer is not allowed to stipulate a probation period with the part-time employee.

1.3 Working Hours

For full-time employees, there are three types of working hour systems, under which different rules for working hours apply.

- Standard working hours system: employees work no more than eight hours per day and no more than 40 hours per week (“Statutory Standard”), and are entitled to at least one rest day every week. Otherwise, overtime will occur.
- Comprehensive working hours system: this is generally applicable to certain special industries requiring long shifts (eg, transportation, airlines, fishery industry, offshore oil exploration), and the employer must obtain approval from the competent authorities, unless otherwise provided by local regulations and rules. Working hours are calculated within a certain calculation cycle (month/quarter/year). The average daily working hours and the average weekly working hours must not exceed the Statutory Standard. Otherwise, overtime will occur.
- Flexible working hours system: this is only applicable to certain job positions (eg, executives, sales personnel, taxi drivers). Similarly, the employer must obtain approval from the competent authorities, unless otherwise provided by local regulations and rules. The employee can perform his/her duties on a flexible schedule, provided that he/she properly completes the work assignment in a timely manner.

Part-time employees are employees who generally work with an employer for no more than four hours per day on average and no more than 24 hours per

week in total. There are no special rules/restrictions applicable to working hours for part-time employees.

Overtime

Overtime refers to the working time that the employer arranges or approves the employees to work over the Statutory Standard. According to the PRC Labour Law (the “Labour Law”), overtime shall not exceed three hours per day or 36 hours per month.

Under the standard working hours system, the employer shall compensate the employee’s overtime work in the following ways.

- For overtime work during working days, the employer should pay not less than 150% of the employee’s normal hourly wage. In general, alternative rest days should not be used to substitute overtime pay for working days.
- For overtime work during rest days, the employer can first consider making arrangements for employees to take alternative rest days. If such alternative rest days cannot be arranged, the employer should pay not less than 200% of the employee’s normal daily or hourly wage.
- For overtime work during a statutory holiday, the employer should pay not less than 300% of the employee’s normal daily or hourly wage. In general, alternative rest days should not be used to substitute overtime pay for statutory holidays.

Under the comprehensive working hours system, the employer should pay not less than 150% of the employee’s normal hourly wage for the extra hours worked during the calculating cycle (regardless of whether the extra hours are for work days or rest days), and not less than 300% of the employee’s normal daily or hourly wage for the extra hours worked on statutory holidays.

Under the flexible working hour system, employees shall not generally be entitled to overtime pay, but the rules are slightly different among provinces and cities. For example, in Beijing, employees under the flexible working hour system are not entitled to any overtime pay at all. However, in some other cities, employees who work extra hours on statutory holidays will still be

entitled to overtime pay of not less than 300% of their normal daily or hourly wage.

If an employer does not make overtime payment for its employee's overtime work, the competent labour authorities have the right to order the employer to make such payment within a limited period; if the employer fails to comply with such order, it will be required to pay 150–200% of the outstanding overtime pay.

1.4 Compensation

There is no nationwide minimum wage. The local government of each region sets its local minimum wage, which is normally updated at least every two years and applies to all employees, regardless of their age, position and experience. The minimum wage generally includes a monthly minimum wage and an hourly minimum wage. The monthly minimum wage applies to all full-time employees, while the hourly minimum wage applies to all part-time employees.

It is not statutorily required for employers to provide bonuses on top of basic salaries; however, it is common to see employers reward employees through various bonuses – eg, the 13th month's salary, year-end bonus, commission, performance bonus. Generally, the issuance of bonuses is solely at the employer's discretion. If the employment contract or the employer's internal policies stipulate the provision of a certain bonus to the employee, the employer shall be bound by those stipulations.

Apart from the minimum wage requirements, there are no mandatory requirements on salary increase (the local government of each region generally issues a salary increase guideline every year, but it is only a reference document to guide enterprises to reasonably determine salary increases and is not mandatory). Salary deduction can only be made upon the employee's consent, unless it is done on certain statutory grounds (eg, sick leave period).

1.5 Other Employment Terms

Holidays

According to the newly updated Regulation on Public Holidays for National Annual Festivals and Memorial Days (effective on 1 January 2025), holidays in China

include 13 days of statutory holiday for all employees (New Year's Day, Spring Festival, Labour Day, Mid-Autumn Festival, National Day, etc), as well as holidays for certain groups of people (eg, a half-day's leave for female employees on Women's Day, and a half-day's leave for 14 to 28-year-old employees on Youth Day).

Leaves

All employees shall be entitled to fully paid statutory annual leave, sick leave and other leaves (maternity leave, childcare leave, etc) in accordance with the PRC laws and the employer's internal policies. The main categories of leave include the following.

Statutory annual leave

Any employee whose accumulated service years (including all the prior service years with current and former employers) is more than one year shall be entitled to paid statutory annual leave. The number of days of statutory annual leave shall be calculated based on the accumulated service years of the employee as follows:

- one to ten years - five days;
- ten to 20 years - ten days; and
- more than 20 years - 15 days.

If the employer fails to arrange the statutory annual leave for an employee due to its operational needs, such statutory annual leave does not need to be arranged by the employer (with the consent of the employee), but the employer shall pay the employee 300% of the wage (the 100% normal wage and an additional 200%) on a daily basis for the unused statutory annual leave.

Sick leave

An employee who suffers from illness or a non-work-related injury has the right to take sick leave to recover from the illness or injury. The minimum salary standard during sick leave required by laws and regulations may be different among provinces and cities, and the commonly used standard is 80% of the local minimum wage. There are also provinces and cities with different sick leave pay standards – eg, Shanghai has its own sick leave and sick pay regulations.

Maternity leave

Female employees who give birth in compliance with PRC birth control policies are entitled to 98 days of maternity leave, 15 days of which may be taken before delivery. The leave can be extended by an additional 15 days under special circumstances such as dystocia and multiple births. Extra maternity leave is granted by local regulations where the specific length varies from city to city. For example, in Beijing and Shanghai, the total length of maternity leave is 158 days, including a base 98-day period under national law and 60 days granted by local regulations.

According to national law, female employees who suffer a miscarriage during the first four months of pregnancy shall be entitled to 15 days of maternity leave, and those who suffer a miscarriage after four months of pregnancy shall be entitled to 42 days of maternity leave.

Marriage leave

An employee is entitled to three days of marriage leave, according to the national law. Moreover, all legally married couples will be entitled to additional marriage leave granted by local regulations.

Paternity leave

Paternity leave for male employees is granted by local regulations only. For instance, paternity leave for male employees in Beijing and Shanghai is 15 days and ten days respectively.

Childcare leave

Childcare leave is granted by local regulations only. For instance, both Beijing and Shanghai have introduced childcare leave that entitles eligible parents to five days of fully paid leave each year until the child reaches three years of age.

Elderly care leave

Elderly care leave is also stipulated in local regulations only. For instance, in Beijing, an employee who is the only child in his/her family is entitled to no more than ten working days of fully paid elderly care leave per calendar year to take care of his/her parent(s) (including legal adoptive parents) who need nursing care due to illness, injury or disability. Shanghai currently does not have elderly care leave.

Bereavement leave

According to the current law, when a parent, spouse or child of an employee of a state-owned enterprise dies, the employee is entitled to take one to three days of bereavement leave. Employers generally refer to this standard in providing bereavement leave to employees.

Confidentiality and Non-Defamation

An employer may formulate internal policies – or agree with employees in the employment contract or a separate confidentiality agreement – on relevant matters of confidentiality, including protection of the employer's trade secrets and other confidential information. The scope of confidential information shall be defined in the agreement at the discretion of the employer.

At present, there are no nationwide regulations requiring the payment of compensation for adhering to a confidentiality obligation. Therefore, in practice, employers need not pay their employees in exchange for their compliance with the confidentiality requirements. If an employee violates the confidentiality requirements and causes economic losses to the employer, the employer can claim compensation against the employee based on the internal policy, relevant stipulations in the employment contract or the confidentiality agreement.

Similarly, employers can set requirements on non-defamation for employees by formulating policies, or by stipulating relevant requirements in the employment contract or a separate agreement, and can claim compensation for any employee violation and losses caused.

2. Restrictive Covenants

2.1 Non-Competes

A non-compete clause is a commonly seen post-termination restrictive covenant for employees so as to protect the confidential information of the employer. Under PRC employment laws, an employer can agree with an employee on non-compete obligations through stipulations in the employment contract or through a separate non-compete agreement. Key non-compete stipulations include the following.

- Restricted competitive behaviours: working for a competing company that produces the same type of products, engaging in the same type of business as their former employer, establishing their own business to produce the same type of products, engaging in the same type of business, or competing with their former employer in any other way.
- Scope of employees: employees subject to non-compete clauses shall be senior management, senior technicians or other employees under confidentiality obligations.
- Scope of regions: the geographical region for non-compete clauses shall be stipulated by the employer and the employee, and is generally limited to the fair and reasonable area that can form an actual competitive relationship with the employer (factors to consider include business coverage and industry characteristics).
- Non-compete period: the effective period for non-compete clauses shall be stipulated by the employer and the employee, and shall not exceed two years post-termination.
- Non-compete compensation: in order to enforce the non-compete clause, the employer must pay compensation to the employee on a monthly basis throughout the non-compete period. The parties can agree on the compensation amount. According to the national rules, where there is no such agreement on the specific amount, the default amount is 30% of the employee's average monthly salary over the previous 12 months before the termination or expiration of the employment contract for each month. Local rules may have specific requirements on the compensation standard.
- Liabilities for breach: under PRC employment laws, if an employee breaches the non-compete obligations, the employer can claim for the liabilities for breach of contract as agreed by the parties, including liquidated damages and/or recovery of the non-compete compensation paid by the employer. Meanwhile, the employer can require the employee to continue performing the non-compete obligations for the rest of the non-compete period (if any).

2.2 Non-Solicits

PRC employment laws are silent on the topic of non-solicitation; however, non-solicitation clauses are

commonly used by employers in practice to prevent former employees from soliciting clients and employees of the employer.

As violating non-solicitation is not a scenario stipulated by the law where the employer can claim for liquidated damages as agreed with the employees, employers can generally only claim for recovery of financial losses suffered due to an employee's breach of a valid non-solicitation obligation. If the employer claims for a breach of non-solicitation by employees, the employer needs to prove the solicitation behaviours and the financial losses incurred.

3. Data Privacy

3.1 Data Privacy Law and Employment Data Privacy Laws

The PRC Civil Code (effective on 1 January 2021) contains a chapter regarding the right to privacy and personal information (PI) protection. The PRC Cybersecurity Law (effective on 1 June 2017), the PRC Data Security Law (effective on 1 September 2021) and the PRC Personal Information Protection Law (PIPL, effective on 1 November 2021) collectively constitute the three fundamental and framework laws regulating data security protection in the PRC. Of these laws and regulations, the PIPL provides the most details regarding PI protection, establishing comprehensive and systematic rules on the processing and protection of PI. Employers should also comply with the PIPL when processing employees' PI; the sections below briefly summarise the key points under the PIPL.

PI Processing Principles

- Lawful, transparent, accurate and secured: PI shall be processed in accordance with the principles of legality, legitimacy, necessity, good faith, openness and transparency. In addition, the quality and security of PI shall be guaranteed during the processing.
- Specified purpose: PI shall be processed for a specified and reasonable purpose. The processing shall be directly relevant to the processing purpose, and shall be performed in a manner that has the minimum impact on personal rights and interests.

- **Minimised collection:** the collection of PI shall be limited to the minimum scope necessary for achieving the processing purpose, and shall not be excessive.
- **Limited retention period:** the retention period of PI shall be the shortest time necessary for achieving the processing purpose, except as otherwise provided by any law or administrative regulation.

Legal Grounds for Processing Employees' PI

According to the PIPL, PI can only be processed based on statutory grounds, with the two grounds most related to the employment sphere being that:

- the individual's consent has been obtained; and
- the processing is necessary for the conclusion or performance of a contract to which the individual is a contracting party, or for conducting human resource management under the employment rules and regulations legally established and collective contracts legally concluded.

However, the PIPL does not stipulate specific standards for determining what constitutes "necessary for conducting human resource management", and thus it is suggested that the employers try to obtain consent from the employees for PI needed in the first place.

Consent and Separate Consent

As the key legal ground for processing PI, the PIPL sets out requirements on obtaining "consent". The consent shall be voluntarily and explicitly given by the individual on a fully informed basis. The PI processor shall truthfully, accurately and completely inform individuals of the following required matters ("Items to Inform"):

- the name and contact information of the PI processor;
- the purposes and methods of processing the PI, the categories of PI to be processed, and the retention periods;
- the methods and procedures for individuals to exercise the rights provided by the PIPL; and
- other matters that should be notified as provided by laws and administrative regulations.

The PIPL also requires "separate consent" for certain circumstances (eg, sharing PI with third parties, processing sensitive PI, outbound transferring PI), which is a form of consent with higher requirements. The specific requirements and form of separate consent are not specified by the PIPL. Based on the current understanding and practice, to constitute a separate consent, the specific item involving PI processing should be listed as a separate item requesting the individual's specific consent explicitly for this item, instead of being hidden in a package of items pending the individual's joint consent.

Sharing Employees' PI With Third Parties

The most relevant employment-related scenarios include engaging third parties in background checks, recruitment, payroll services and labour dispatch, etc. When sharing employees' PI with third-party processors, apart from the Items to Inform, the employer shall also inform the employees of the recipient's name and contact information, the purposes and methods of processing, and the categories of PI, and obtain the employee's separate consent.

Outbound Transfer of Employees' PI and Standard Contract

The outbound transfer of employees' PI is not unusual, especially for multinational employers sharing employees' PI within a global management system. Given the special nature of outbound transfer, the PIPL sets out detailed requirements in this regard. Apart from informing employees of the Items to Inform and additional items, and obtaining separate consent, the PI processor also needs to conduct a PI protection impact assessment and adopt one of the three following legal mechanisms:

- a security assessment organised by the National Cyberspace Department;
- a certification by a specialised agency for protection of personal information in accordance with the provisions of the National Cyberspace Department; or
- a standard contract (SCC) formulated by the National Cyberspace Department with the overseas recipient (the "SCC Approach").

Of these transfer mechanisms, detailed rules have been laid out regarding the SCC Approach, and the SCC template has been published. Employers who are eligible to adopt the SCC Approach shall follow the relevant rules for complying with the PI outbound transfer requirements.

The Provisions on Promoting and Regulating the Cross-border Transfer of Data promulgated on 22 March 2024 exempt the PI processor from adopting one of the above three legal mechanisms for PI outbound transfer on certain grounds, including employers' cross-border transfer of employees' PI where it is necessary for conducting human resource management according to the rules and regulations and collective contracts established/concluded in accordance with the law.

Retaining Employees' PI

According to the PIPL, the retention period of PI shall be the shortest time necessary for achieving the processing purpose, though the specific length of the retention period is not specified. It is suggested that employers decide the retention period according to the type of PI and the specific stage in the employment life cycle.

Legal Liabilities

PI processors that violate the PIPL in their PI processing will be subject to the following legal liabilities.

Civil liabilities

Individuals can file lawsuits against PI processors according to the PRC Civil Code, claiming an infringement regarding their PI. As provided by the PIPL, the burden of proof for such cases lies with the PI processor to prove that it is not at fault. Otherwise, the PI processor shall be liable for damages and other civil liabilities. Where PI processors violate the requirements under the PIPL during PI processing and infringe the rights and interests of multiple individuals, the People's Procuratorate, consumer organisations prescribed by the laws, and organisations determined by the state cyberspace authorities may file lawsuits.

Administrative liabilities

Competent PI protection authorities can also issue orders for rectification and warnings, and can confis-

cate unlawful income from PI processors for violations of the PIPL. In the case of failure to rectify, legal liabilities include fines, rectification and the confiscation of unlawful income.

Criminal liabilities

The PIPL refers to the PRC Criminal Law for relevant behaviours constituting crimes. According to the PRC Criminal Law, fines and/or up to seven years of imprisonment can be imposed for illegally acquiring PI, or illegally selling or providing PI to third parties.

4. Foreign Workers

4.1 Limitations on Foreign Workers

Foreigners working in the PRC should abide by laws and regulations such as the Law on the Management of the Entry and Exit of the PRC, and the Regulations on Management of Foreigners Working in China. According to these regulations, for foreigners to work legally in China, the following requirements shall be met:

- they have reached the age of 18 and are in good health;
- they have professional skills and work experience required by the job;
- they do not have a criminal record;
- they have a definite employer; and
- they have a valid passport or other international travel document.

In addition, for foreign workers to work legally in China, the prior approval of competent labour administrative authorities, a work permit and a residence permit shall be obtained. Failure to obtain the valid permits will lead to penalties for both the employer and the employee, and detention may be imposed on the foreign employee. These rules do not apply to foreign employees of foreign embassies, consulates, offices of the United Nations and other international organisations in China, which enjoy diplomatic privileges and immunities.

As a side point, the term of an employment contract between an employer and a foreign worker may not exceed five years. The employer may apply for renew-

al within 30 days prior to the expiration date, and the employment contract can be renewed upon the labour administrative authorities' approval and completion of the work permit extension procedures.

4.2 Registration Requirements for Foreign Workers

General Registration Requirements

All foreign workers shall obtain valid work permits to work in China, except in very special circumstances – eg, if the duration of their stay in China is less than 90 days and the worker enters China for certain reasons, including:

- to conduct a trial for sports training in China;
- to purchase machinery or equipment for supporting maintenance, installation, commissioning, disassembly, guidance or training; or
- to be dispatched to domestic branches, subsidiaries or representative offices to complete short-term work.

In other circumstances, the registration can generally be divided into two kinds depending on the duration of the stay (ie, whether it is over 90 days or not). Generally, there are two kinds of arrangement commonly adopted in practice for employers to have foreign nationals work in China:

- the foreign national is directly employed by a PRC entity, which acts as the employer of that foreign national (“direct hiring”); or
- the foreign national is employed by a foreign entity and then seconded to work in a PRC entity (“international secondment”).

To implement the international secondment mode, the foreign worker must be in a managerial or technical position in China, and the foreign entity shall issue a secondment letter, stipulating contents including but not limited to workplace, term, salary and position. The PRC entity shall apply for the work permit with the secondment letter.

Type of Foreign Workers

There are different types of foreign workers permitted to apply for work permits, including high-end talent (Category A), foreign professionals (Category B) and

other foreign personnel (Category C). There are specific criteria indicating which category shall apply to each foreign employee when applying for work permits.

Procedures for Obtaining Work Permits and Residence Permits for Foreign Employees

For a PRC employer to hire a foreign employee who comes from abroad, the general procedures for obtaining a work permit and a residence permit are as follows:

- the employer is to register in the “Service System for Foreigners Working in China” and upload the relevant documents required;
- the employee may apply for a Z visa after the work permit notice has been issued, and enter China with the work permit notice;
- within 15 days of entry with the work permit notice, the employer should apply for a work permit; and
- the foreign employee shall then apply for a residence permit after receiving the work permit.

5. New Work

5.1 Mobile Work

Mobile work (remote work) is not a new concept and was widely used during the COVID-19 pandemic period. Post-pandemic, some employers still keep the remote work option open to their employees or adopt a hybrid work mode (onsite and remote).

Work location is a mandatory term in an employment contract, and it will normally be an onsite location. Switching from onsite work to remote work will generally require the mutual consent of both the employer and the employee. In practice, there remain some uncertainties or difficulties related to remote work, as follows.

Employee Management

In the remote work mode, employers may lack adequate channels to monitor employees' working status, so it is suggested that supporting policies are incorporated during the remote work arrangement, including a request for the employee to check in online through attendance software during his/her normal

working hours and retain all remote work software and instant messaging tools online and responsive during working hours.

Work-Related Injury

For employees who are injured during remote work, there is some uncertainty about how to prove that an injury occurred during work hours, in the workplace and for work-related reasons. According to judicial practice, if it can be proved that the injury occurred during the working hours required by the employer, and that the employee was working at that time (eg, there is an online record of the work, there is a description of the work in the work log, and there is even an email sent as proof of the work done at the time), it is likely that work-related injury will be recognised and the employer will need to bear the relevant statutory obligations.

IP Protection

In the remote work arrangement, the vast majority of information is transmitted through the internet, and it is more difficult to monitor employees' behaviours and ensure that they do not disclose confidential information from the employer. Therefore, it is suggested that the employer strengthen the confidentiality requirements during remote work periods and co-operate with IT software suppliers to establish a comprehensive mechanism for the protection of the employer's IP during remote work.

5.2 Sabbaticals

Although some universities in China have been trying to implement this kind of leave for teachers, the "sabbatical" is not a legal concept stipulated by PRC employment laws, but rather a kind of optional leave granted by universities to teachers. Consequently, there is a lack of regulations on the terms of employment (salary standard, etc) during the sabbatical period at the national level, and there are no related cases demonstrating the attitude of the arbitration commission/court.

5.3 Other New Manifestations

With the development of the platform economy and the need for more flexible employment, new forms of employment have developed and infiltrated a growing number of industries in the past year; typical new

manifestations include delivery persons, online platform taxi drivers and network anchors. The identification of the relationship between the platform enterprises and the individuals engaged, and the protection of such individuals' rights and interests, are of most concern.

The national and local governments have been issuing regulations and policies governing new forms of employment in recent years. The Ministry of Human Resources and Social Security, together with seven other departments, issued a guiding opinion in 2021, which for the first time introduced a new concept called a "less-than-complete employment relationship" (as opposed to an ordinary employment relationship or a civil law relationship). It also set out comprehensive provisions to ensure platform workers' rights and interests, including reasonable pay, accident insurance participation and vocational training.

In 2024, the Ministry of Human Resources and Social Security further issued three guidelines regulating platform employment, including:

- a guideline on working hours, rest and remuneration for platform workers;
- a guideline on the publication of labour rules for platform enterprises; and
- a guideline on services to safeguard the rights and interests of platform workers.

Local rules and regulations have also been issued, providing more detailed guidance, including allowing work-related injury insurance to be paid separately for individuals under new forms of employment. It will be important to pay attention to any new rules introduced in the future concerning these new forms of employment.

6. Collective Relations

6.1 Unions

According to the Labour Law, trade unions shall represent and safeguard the legitimate rights and interests of employees, and carry out their activities independently in accordance with the law. The Trade Union Law of the PRC (the "Trade Union Law") (last revised

in 2021) further clarifies the status of a trade union, which is a voluntary organisation formed by employees of their own free will.

Trade unions have the general right to represent and protect the rights of employees. According to the Trade Union Law, specific rights of trade unions include but are not limited to:

- monitoring employers' violation of relevant policies, demanding that employers rectify any violations, and ensuring that the employees exercise their right to democratic management in accordance with the law;
- assisting and guiding the employees in signing employment contracts, attending negotiation and signing collective contracts with the employers on behalf of the employees, and filing arbitration or cases on behalf of the employees; and
- providing advice regarding the employers' disposition of employees and reviewing the reason for unilateral termination of employees.

6.2 Employee Representative Bodies

Under PRC employment laws, employees can exercise their right to democratic management through the employee representatives' congress, which has the right to inspect the daily operation of the employer and is responsible for representing the employees' legal interests.

The employee representatives shall be elected by employees; the specific proportion and number shall be determined in accordance with the implementation measures of the employee representatives' congress of the enterprise, or determined by the enterprise through consultation with the trade union, but shall be no fewer than 30 people.

6.3 Collective Bargaining Agreements

In most cases, employment terms and conditions are agreed and executed individually, but collective bargaining also takes place at both the enterprise level and the industry level. According to PRC employment laws, collective employment contracts shall be concluded between the employer and the trade union that represents employees (for an employer that has not established a trade union, the next higher-level

trade union shall guide the representatives elected by the employees to conclude a collective contract with the employer) in (i) matters relating to remuneration, working hours, rest and vacation/holidays, occupational safety and health, insurance and welfare; or (ii) specialised collective contracts on matters relating to occupational safety and health, female employees' rights protection, salary adjustment mechanism, etc, while requiring that the draft be submitted to the employee representatives' congress or all employees for discussion. Currently, most collective contracts are negotiated at the enterprise level, and collective contracts are more common in enterprises in the manufacturing and retail industries.

The collective contract shall be submitted to the labour administrative department after being concluded, and shall become effective after the lapse of 15 days from the date of receipt by the labour administrative department, unless any objections to the contract are raised.

7. Termination

7.1 Grounds for Termination

The PRC employment laws set strict limitations on employment relationship terminations, and there is no concept of "termination at will" for full-time employees. The statutory grounds can be divided as follows.

Non-Fault Termination

Termination upon mutual agreement

An employment contract may be terminated upon mutual agreement between the employer and the employee, and the employer is obliged to pay the employee the statutory severance.

Unilateral termination by the employer

An employer is entitled to unilaterally terminate the employment contract with 30 days' prior written notice or one month's salary in lieu, and with statutory severance pay, in the following circumstances:

- where an employee suffers from an illness or a non-work-related injury and is unable to undertake the original job or other job arranged for them by the employer following completion of the stipulated medical treatment period;

- where the employee is proved incompetent in their job and remains incompetent after receiving training or a position amendment by the employer; or
- where the objective circumstances on which the conclusion of the employment contract was based have undergone major changes and, as a result, the employment contract can no longer be performed, and upon negotiation between the employer and the employee, both parties are unable to reach an agreement on the change of the employment contract.

Unilateral termination by an employee (resignation)

An employee has the right to unilaterally terminate the employment contract by giving his/her employer three days' prior written notice during the probation period. After completion of the probation period, an employee may terminate his/her employment contract upon providing 30 days' prior written notice to the employer.

Fault Termination

Unilateral termination by the employer

An employer is entitled to unilaterally terminate the employment contract of an employee without prior notice or any severance pay under any of the following circumstances:

- where the employee is proven to have failed to satisfy the recruitment requirements during the probation period;
- where the employee has seriously violated the internal policies of the employer;
- where the employee has committed serious dereliction of duty or engaged in malpractice for personal gain, causing material damage to the employer;
- where the employee has established an employment relationship with another employer concurrently, which materially affects the completion of his/her tasks with the current employer, or the employee refuses to rectify the matter as demanded by the employer;
- where the employee is prosecuted for criminal liability according to the law; or
- where an employment contract is rendered wholly or partially void when the employee causes the employer to conclude or amend the employment contract against the employer's true intention by

means of fraud, coercion or taking advantage of the employer's disadvantaged position.

Unilateral termination by the employee

If any of the following circumstances occurs, an employee may terminate the employment contract immediately and is entitled to statutory severance paid by the employer:

- where an employer fails to provide labour protection or working conditions pursuant to the provisions in the employment contract;
- where an employer fails to pay the remuneration in full and/or on a timely basis;
- where an employer fails to make social insurance contributions for the employee in accordance with the PRC laws;
- where an employer's internal rules and policies violate the law and cause damages to the employee's rights and interests;
- where an employment contract is rendered wholly or partially void when the employer causes the employee to conclude or amend the employment contract against the employee's true intention by means of fraud, coercion or taking advantage of the employee's disadvantaged position; or
- where an employer uses means such as violence, threats or unlawful restriction of personal freedom to coerce an employee to work, or where an employer gives orders that violate safety rules or force an employee to engage in dangerous operations that endanger the employee's safety.

End of Employment

An employment contract will be ended when any of the following occurs:

- the term of the employment contract expires;
- the employer is declared bankrupt;
- the employer has its business licence revoked, is ordered to close down or decides on early dissolution;
- the employee starts to take his/her pension entitlement or reaches legal retirement age;
- the employee is dead or declared dead or missing by the People's Court of the PRC; or
- any other situation stipulated by applicable PRC laws.

Under the first three circumstances, the employer shall pay the employee statutory severance.

Economic Layoffs

If an employer is reducing its workforce by 20 persons or more, or by 10% or more of the total number of its employees, the termination ground of economic layoff can be invoked under any of the following circumstances:

- restructuring pursuant to the PRC Enterprise Bankruptcy Law;
- serious difficulties in production and/or business operations;
- the employer switches production, introduces a major technological innovation or revises its business method and, after the amendment of employment contracts, still needs to reduce its workforce; or
- other major changes occur to the objective economic circumstances relied upon at the time of execution of the employment contracts, rendering them unable to be performed.

Before the layoffs, the employer has to follow the procedural requirements as stipulated in the Employment Contract Law, as follows:

- explain the circumstances to its trade union or all of its employees 30 days in advance;
- consider the opinions of the trade union or the employees; and subsequently
- report the layoff plan to the competent labour authorities.

7.2 Notice Periods

Whether prior notice is necessary depends on the specific statutory ground for the termination. In the circumstances outlined in **7.1 Grounds for Termination** (Non-Fault Termination: Unilateral termination by the employer), an employee must be given 30 days' prior written notice or one month's salary in lieu of notice. An employee shall also give prior notice to the employer upon resignation.

In the case of economic layoffs, an employer shall explain the situation to the trade union or all of its employees 30 days in advance (which can be regarded as a form of prior notice) and seek their opinions

before reporting the proposed layoffs to local administrative authorities.

Although not required by the Employment Contract Law, some local regulations in cities such as Beijing also require the employer to give prior notice to employees when the term of an employment contract expires and the employer decides not to renew it.

Severance

Please refer to **7.1 Grounds for Termination** and the list of termination grounds on which the employee is entitled to severance pay.

Generally, statutory severance is calculated as one month's salary for every year of service of the employee. Since the Employment Contract Law took effect on 1 January 2008, statutory severance pay must be calculated in two parts.

- For the service period before 1 January 2008: statutory severance pay will be calculated in accordance with the applicable laws and regulations before 1 January 2008 (these can vary from the calculations that apply after 1 January 2008).
- For the service period after 1 January 2008: statutory severance pay will be one month's salary for every year of service (any period of six months or more but less than a year will be counted as one year), and half a month's salary for a service period of less than six months. The one month's salary is calculated based on the employee's average monthly salary during the 12 months prior to termination. However, when the average monthly salary of an employee exceeds three times the social average monthly remuneration issued by local government at the locality of the employer, the employee's average monthly salary shall be capped at three times the social average monthly remuneration, and the length of service years shall be capped at 12 years.

Procedural Requirements for Termination

The requirements to be observed include:

- notifying the trade union of the ground for termination (for grounds of unilateral termination by the employer);

- delivering the termination notice to the employee and making the statutory severance payment if needed (for grounds of unilateral termination by the employer);
- registering the termination with the labour authorities if so required by local regulations, and assisting with the social insurance and housing fund transfer for the employee; and
- issuing an employment termination certificate to the employee.

7.3 Dismissal for (Serious) Cause

Under PRC employment laws, dismissal for serious cause is generally understood under Article 39 of the Employment Contract Law; see **7.1 Grounds for Termination** (Fault Termination: Unilateral termination by the employer). Among the circumstances listed, the one most commonly used in practice is “where the employee has seriously violated internal policies of the employer”. For an employer to successfully terminate an employee for serious violation of the employer’s internal policies, the following conditions must be met:

- the burden of proof is on the employer to prove relevant disciplinary violation behaviour;
- the company’s internal rules and regulations clearly stipulate that the behaviour is a serious violation of discipline, and the company consequently has the right to unilaterally terminate the employment contract; and
- the above-mentioned internal rules and regulations fulfil the democratic and publicising procedures.

The employer also needs to fulfil the procedural requirements summarised in **7.2 Notice Periods**.

7.4 Termination Agreements

Normally, a written termination agreement will be reached between both parties upon mutual termination of the employment contract. There are no statutory requirements on the format or must-have terms regarding the termination agreement. According to judicial interpretations, the release clause shall be generally enforceable as long as it does not violate the mandatory provisions of laws and administrative regulations nor fall under fraud, duress or exploitation of an unfavourable position.

7.5 Protected Categories of Employee

An employer cannot unilaterally terminate the employment of employees in the following circumstances (unless termination is based on Article 39 of the Employment Contract Law):

- the employee is engaged in operations that expose him/her to occupational disease hazards and has not undergone a pre-departure occupational health check-up, or is suspected of having contracted an occupational disease and is being diagnosed or is under medical observation;
- the employee has been confirmed as having lost (or partially lost) his/her working capacity as a result of contracting an occupational disease or sustaining a work-related injury with his/her current employer;
- the employee has contracted an illness or sustained a non-work-related injury, and the statutory medical period has not expired;
- the employee is a female employee on pregnancy, maternity or breastfeeding leave; or
- the employee has been working for the employer continuously for at least 15 years and has less than five years before the statutory retirement age.

In addition, if an employee falls into any of the above circumstances, the employment contract shall not be ended upon the expiration of his/her employment contract. Instead, the employment contract must be extended until the relevant circumstance ceases to exist (unless the employee has lost (or partially lost) his/her working capacity listed in the second situation above, in which case the end of his/her employment contract shall be in accordance with relevant regulations related to work-injury insurance).

PRC employment laws also set some special dismissal protections for certain trade union members and individuals elected for collective bargaining on behalf of employees (“Employee Bargaining Representative”).

- Employment contracts for full-time presidents/vice presidents/committee members of the company trade union shall be automatically extended for a period equal to their term of office, and employment contracts for part-time presidents/vice

presidents/committee members of the company trade union shall be automatically extended until the expiration of their term of office. However, this protection does not apply in cases of personal serious misconduct during their term of office or upon reaching the statutory retirement age. In addition, the law sets special procedural requirements for dismissing the president or vice president of the company trade union during their term of office, including:

- (a) obtaining consent from both the company trade union committee and the next higher-level trade union organisation; and
 - (b) lawfully removing the president or vice president from office in accordance with statutory procedures (eg, through a trade union members' congress or congress of members' representatives).
- The employment contract of an Employee Bargaining Representative that expires during the term in which the Employee Bargaining Representative was conducting collective bargaining shall be automatically extended until the completion of his/her duties of collective bargaining, unless the Employee Bargaining Representative has seriously violated the labour discipline or the internal policies of the employer, committed serious dereliction of duty, or been prosecuted for criminal liability according to the law.

8. Disputes

8.1 Wrongful Dismissal

Employees who consider that they have been wrongfully dismissed may bring a wrongful dismissal claim to the judicial authorities. The grounds generally include:

- substantive violations of the law, whereby the basis (factual basis or the statutory grounds invoked) for unilateral termination cannot be substantiated; or
- procedural violations of the law, including not notifying the trade union and not fulfilling relevant formalities requirements.

If their claim is supported, the remedy will be either reinstatement of employment with back pay or a double severance payment.

8.2 Anti-Discrimination

Discrimination is prohibited by PRC employment law. The Labour Law generally provides that people should not be treated unfairly due to race, gender, religion, etc, and that women should have equal rights of employment to men. In addition, the PRC Employment Promotion Law provides that employees are entitled to equal employment, and that individuals seeking employment shall not be discriminated against because of ethnicity, race, gender, religious belief, disability or whether the individuals are from rural places. The PRC Law on the Protection of Rights and Interests of Women, which was amended and took effect on 1 January 2023, further ensures equal employment rights for and prohibits discrimination against female employees. There are also specific regulations prohibiting discrimination against individuals who are hepatitis B carriers.

"Equal employment rights disputes" has been listed as a separate cause of action since 2019. Generally, individuals can file "equal employment rights disputes" lawsuits before the court, requiring the company to bear the corresponding legal responsibilities. The burden of proof is usually on the individual to prove that the enterprise conducted discriminative actions. Remedies available to employees vary depending on the specific cause of action, with monetary compensation for economic loss and emotional loss in certain circumstances being the main remedy; other possible remedies include requiring the enterprise to apologise to the individual publicly.

8.3 Digitalisation

In China, labour arbitration procedures are currently generally conducted onsite.

However, online litigation is now widely used for court proceedings, especially since the COVID-19 pandemic. According to the Rules of Online Litigation of People's Courts, the court may rely on the electronic litigation platforms to complete all or part of the litigation procedures of case docketing, mediation, exchange of evidence, questioning, court trial and service online.

The court shall decide whether to conduct an online court trial via video based on the opinions of the parties, the circumstances of the case, social impact,

technical conditions and other factors. However, there are also circumstances where online court trials shall not apply, including where:

- all parties expressly disagree, or any of the parties disagrees with a good reason;
- none of the parties has the technical conditions and capability to participate in an online court trial;
- it is necessary to ascertain identities, verify originals or check physical objects onsite through the court trial;
- the case is difficult and complicated and there is a wide variety of evidence, such that the application of an online court trial is not conducive to finding out the facts and applying laws;
- the case involves national security or state secrets;
- the case has a great social impact and has attracted wide public attention; or
- the court considers that there is any other circumstance that is not suitable for an online court trial.

Besides this, arbitration committees and people's courts in some regions are also trying to provide an asynchronous hearing approach, which refers to hearings where the parties may choose to log on to the online arbitration/court platform at their own discretion within the time period specified by the arbitral committee/court to complete the hearing procedures (defence, investigation, adduction of evidence, cross-examination, etc). Under this approach, the parties may log on to the platform at different times to complete the relevant hearing procedures.

9. Dispute Resolution

9.1 Litigation

In China, most employment-related disputes are resolved under a two-stage framework – ie, labour arbitration followed by litigation. According to the PRC Employment Dispute Mediation and Arbitration Law, before filing an employment dispute with a court, it is mandatory to submit the dispute to the competent local labour arbitration commission, an institution specialising in hearing employment dispute cases. Any party that is unsatisfied with the arbitration award is entitled to bring the lawsuit to the competent people's courts (the first instance court and then the second

instance court), except in certain situations where the arbitration award is final.

According to the PRC Employment Dispute Mediation and Arbitration Law, where a labour dispute involves more than ten employees and the employees have the same claim, they may recommend their representatives to participate in the mediation, arbitration or litigation.

9.2 Alternative Dispute Resolution

In addition to arbitration and litigation, an employer and employee are encouraged to consult with each other and to reach a mediation agreement on employment dispute settlement under PRC employment laws. Even if the employment disputes have been submitted to arbitration or litigation, an employer and employee could still negotiate and reach a mediation agreement, as long as the final arbitral award or court decision has not been made. The conciliation is not mandatory and must be based on both parties' voluntary decision. The parties may choose to submit their employment disputes directly to arbitration without any pre-claim conciliation.

Labour supervision is also an available option. According to the Regulation on Labour Security Supervision, any organisation or individual shall have the right to report any act violating labour laws, regulations or rules to the labour supervisory authority (an administrative department responsible for the supervision of labour security administration). The labour supervisory authority will accept the reports and complaints, and will investigate, correct and impose punishment for any relevant acts.

9.3 Costs

Under PRC law, the arbitration commission/court will not generally award the prevailing party attorney's fees or other costs. However, there may be special rules – eg, according to a local rule in Shenzhen, where the employee is the prevailing party in a labour dispute arbitration or litigation case, the attorney's fee paid by the employee may be borne by the employer. The maximum amount shall not exceed CNY5,000; the portion exceeding CNY5,000 shall be borne by the employee.

Trends and Developments

Contributed by:

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King & Wood Mallesons is a leading law firm with exceptional legal expertise and depth of knowledge. The firm provides comprehensive one-stop legal solutions to clients in China as well as internationally. The labour and employment department has seven partners and more than 20 attorneys and assistants based in Beijing, Shanghai, Shenzhen, Guangzhou, Suzhou and Haikou, enabling them to quickly and effectively resolve labour law issues across Mainland China. The firm has provided legal services to

more than 300 Fortune 500 companies, multinational companies, large state-owned enterprises and well-known domestic enterprises. Its extensive experience in handling both adversarial and non-adversarial matters, and its direct participation in legislation, facilitate a deep and accurate understanding of the complicated and rapid changes in PRC labour and employment laws and policies, as well as the latest HR, management and employment issues.

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China's Changing Labour Landscape: Retirement Reform, New Trends in Non-Compete Disputes and Employment Protections Under New Employment Forms

China's labour law landscape has undergone various reforms in the past year, represented by the official implementation of the retirement reform. To promote and stabilise the economy, China has been implementing new measures, resulting in numerous developments in the labour market. Of the dynamics in the employment law area, the following are particularly noteworthy:

- the official implementation of the postponed retirement policy;
- trends in judicial practice for non-compete labour disputes; and
- protection of workers' rights and interests under the new employment forms.

Implementation of the new retirement policy

The Measures of the State Council on the Gradual Raising of the Statutory Retirement Age ("Measures") came into effect on 1 January 2025, marking the official implementation of the gradual postponed retirement reform in China, aiming to ease the elderly care burden and improve efficiency. The key points of the Measures include:

- gradually raising the statutory retirement ages;
- introducing the flexible retirement mechanism; and
- increasing the minimum contribution period for receiving pension benefits.

Following the Measures, the newly issued Interim Measures for Implementing Flexible Retirement System ("FRS Interim Measures") also came into effect on 1 January 2025, further stipulating detailed rules for flexible retirement. This section aims to provide an overview of the rules for the new retirement legal regime in China as set out by the Measures and the FRS Interim Measures, together with local rules and practice.

New statutory retirement age

Starting from 1 January 2025, the statutory retirement age will gradually be raised to the new statutory retirement age over 15 years, as follows:

- for male employees whose original statutory retirement age is 60, the new statutory retirement age will be gradually raised by one month every four months until it reaches 63;
- for female employees whose original statutory retirement age is 55 (female employees in managerial/technical positions), the new statutory retirement age will be gradually raised by one month every four months until it reaches 58; and
- for female employees whose original statutory retirement age is 50 (female employees in non-managerial/technical positions), the new statutory retirement age will be gradually raised by one month every two months until it reaches 55.

For example, a male employee born in January 1970 who is originally scheduled to reach the statutory retirement age of 60 in January 2030 will reach the

raised statutory retirement age of 61 years and four months in May 2031.

Flexible retirement mechanism

The Measures and the FRS Interim Measures have introduced a flexible retirement mechanism, allowing employees some flexibility regarding their retirement timing, either earlier (“Early Retirement”) or later (“Delayed Retirement”) than statutory retirement, provided that certain requirements are met.

• Early Retirement:

- (a) employees shall meet the minimum contribution period for receiving pension benefits (see below);
- (b) employees may voluntarily opt for early retirement;
- (c) the period for Early Retirement shall not exceed three years;
- (d) the actual retirement age should not be earlier than the original statutory retirement age (ie, 60 for male employees and 50/55 for female employees); and
- (e) employees shall give written notice (“Written Notice”) to their employers at least three months prior to the selected retirement date.

• Delayed Retirement:

- (a) employees shall meet the minimum contribution period for receiving pension benefits (see below);
- (b) employees shall consult with and reach an agreement with their employer on Delayed Retirement;
- (c) the period for Delayed Retirement shall not exceed three years;
- (d) a written agreement (“Written Agreement”) shall be executed by the employee and employer at least one month prior to the employee reaching their raised statutory retirement age, confirming the delayed retirement date and relevant matters; and
- (e) once the postponed retirement period is confirmed, it can no longer be extended further.

For example, a male employee with the raised statutory retirement age of 62 can voluntarily choose to retire at a time between the ages of 60 and 62, or, after consultation and reaching agreement with his

employer, can choose to postpone his retirement to a time between the ages of 62 and 65.

Some cities, such as Beijing and Guangzhou, have issued template documents for the Written Notice required for Early Retirement and the Written Agreement required for Delayed Retirement, providing guidance for employers and employees. Relevant formalities at local human resources departments have also been updated accordingly.

The Measures and the FRS Interim Measures also set other stipulations related to flexible retirement. For example, both rules emphasise that during the implementation of flexible retirement, it is not allowed to illegally force employees to choose their retirement age directly or in a disguised form against their will.

In addition, there are special rules for certain categories of employees. Public servants, leaders and other management personnel of state-owned enterprises and public institutions shall promptly go through the retirement formalities upon reaching their new statutory retirement age. Other employees of state-owned enterprises and public institutions opting for flexible retirement shall obtain approval pursuant to relevant procedures.

Minimum contribution period for receiving pension benefits

The current minimum contribution period for employees to receive pension benefits (“Minimum Contribution Period”) is 15 years. According to the Measures, starting from 1 January 2030, the Minimum Contribution Period will be increased by six months each year, until it reaches 20 years in 2039.

Employees who have reached their statutory retirement age but have not met the Minimum Contribution Period can satisfy the requirement of the Minimum Contribution Period either by extending the contribution period or by making a one-time contribution in accordance with the relevant laws and regulations.

As the Minimum Contribution Period will be changing from 2030 to 2039, a question arises for employees opting for flexible retirement as to whether to use the actual retirement date selected or the date they reach

the raised statutory retirement age to determine the Minimum Contribution Period. The FRS Interim Measures made this point clear:

- in determining the Minimum Contribution Period, the actual retirement date selected shall apply for employees opting for Early Retirement; and
- for employees opting for Delayed Retirement, the date they reach the raised statutory retirement age shall apply.

Summary

To sum up, following the implementation of the Measures and the FRS Interim Measures, China's retirement policy has officially entered a new stage. It can be anticipated that more supporting regulations and rules will be released. Both employers and employees are advised to update their practices regarding retirement accordingly, and to pay ongoing attention to relevant policies and judicial practices.

Trends in judicial practice for non-compete labour disputes

Driven by the increasingly fierce climate of market competition, employers are paying more attention to enforcing employees' post-termination non-compete covenants, while employees are becoming more aware of their possible legal defences to protect themselves from claims, leading to a more complicated dynamic in non-compete labour disputes.

This complexity manifests in two key trends. On the one hand, non-compete covenants have been abused beyond the legally permissible bounds, extending to positions such as security guards, cooks and warehouse clerks, and even to all-employee coverage. On the other hand, there have been more and more high-profile non-compete-related cases between renowned companies and senior employees, involving significant monetary claims. Under this context, heightened judicial scrutiny has been observed for non-compete labour disputes in practice.

Legally permissible scope of personnel who may be subject to non-competes

Non-compete agreements aim to protect the employer's confidential information by placing reasonable restrictions on employees' freedom of employment.

In this light, having access to the company's confidential information should be a precondition for setting non-compete obligations on an employee. According to the PRC Employment Contract Law, personnel who can be subject to non-competes include senior management personnel, senior technical personnel and other personnel with confidentiality obligations. In defining "other personnel with obligations of confidentiality", elements including but not limited to the nature of the position, work content and the possibility of accessing confidential information should generally be considered.

In practice, the application of non-compete clauses is becoming increasingly widespread, and there are cases where the scope has been abused beyond the legally permissible bounds. In one typical case issued by the PRC Supreme People's Court and the Ministry of Human Resources and Social Security, a security company, as the employer, filed a labour arbitration against an ex-employee who worked as a security guard and later joined another security company to work as a security guard. The company claimed that the employee breached his non-compete obligations. In response, the employee argued that, as a security guard, he had no knowledge of or access to the company's confidential information and thus should not be subject to non-compete obligations. The arbitration committee overruled the employer's claims, holding that, considering the nature of this employee's position and his main responsibilities (routine patrol), it is apparently difficult for this employee to learn confidential information of the company, and the company has no evidence to prove that the employee had access to its confidential information.

The above case is not an isolated example. There have been other similar non-compete dispute cases filed by employers against ex-employees in positions such as cook and warehouse clerk, where the judicial authorities have overruled the employer's claims on the same ground.

It can be seen from the above cases that non-compete agreements can be deemed invalid and unenforceable if the employer has no evidence to prove that the employee has access to the employer's confidential information.

Substantive review of competitive relationships

In non-compete dispute cases where the employees are within the permissible scope subject to non-compete obligations, the judicial authorities tend to focus on a review of the competitive relationships. The noteworthy points are highlighted below, based on a high-profile case (“Case”).

The Case was between a leading Chinese quantitative hedge fund company (“Employer”) and its former trading strategist (“Ex-employee”), and caused heated discussion in the industry. The Ex-employee initiated a labour dispute against the Employer, requesting unpaid non-compete compensation for the period in which he alleged to have fulfilled the non-compete covenants. The Employer counterclaimed against the Ex-employee, alleging the Ex-employee’s breach of non-compete covenants, including requesting liquidated damages for breaching non-compete obligations in an amount over RMB4 million. In the final judgment, the court found that the non-compete covenants had been terminated due to the Employer’s failure to pay non-compete compensation for more than three months, and therefore did not support the Employer’s claim of the Ex-employee’s breach of non-compete covenants.

When reviewing competitive relationships, in recent non-compete labour disputes the courts have tended to take substantive review going beyond the business scope in the business licence and taking more factors into consideration, including actual business, audiences of product/service, the employee’s job with a new employer, industry practice, etc.

In the Case, despite the business scope of the Ex-employee’s new employer (IT development) not overlapping with that of the Employer (investment management), the first instance court found there is a competitive relationship, taking the following factors into consideration:

- the Employer’s reasonable explanation that it has IT development activities in actual operations and that IT development is the core competitive edge of quantitative investment management;
- it is also industry practice that different functions are assigned to affiliates of an investment com-

pany, but offer overall support to the investment business (software developed by the new employer is mainly about quantitative trading and its affiliate is a direct competitor to the Employer); and

- the job the Ex-employee took with the new employer is the same as that he had with the Employer (quantitative strategy research).

Similar logic can also be seen in the No 190 guiding case released by the PRC Supreme Court in 2022, where the court did not limit its examination to the overlap of the registered business scope of the ex-employer and the new employer, but also considered the overlap of their actual business activities, customers/potential customers and the corresponding market.

Obligation to report employment status

Another point worth noting is the obligation to report employment status, which is more of a collateral obligation to non-compete obligations. It is common for employers to stipulate in non-compete covenants that an employee is obliged to report employment status to the ex-employer during the non-compete period (“Reporting Obligation”). However, there are no laws or regulations directly stipulating a Reporting Obligation; in practice, it is disputable whether failure to fulfil the Reporting Obligation equals a breach of non-compete obligations. Moreover, it can be risky if employers stop payment of non-compete compensation based only on an ex-employee’s failure to fulfil the Reporting Obligation.

In the Case outlined above, the Reporting Obligation was agreed upon between the Employer and the Ex-employee, but the Ex-employee did not fulfil such obligation during the non-compete period. The Employer stopped payment of non-compete compensation from the second month of the non-compete period, and the Ex-employee later notified the Employer of the termination of non-compete covenants due to its failure to pay non-compete compensation for more than three months.

There are split opinions on the Case among the labour arbitration commission, the first instance court and the second instance court.

- The labour arbitration commission held that the Ex-employee's failure to fulfil the Reporting Obligation as agreed can be regarded as a breach of non-compete obligations, thereby obliging the Ex-employee to pay liquidated damages.
- The first instance court held that such failure to fulfil the Reporting Obligation can be regarded as a breach of non-compete obligations and therefore justified the Employer stopping payment of the non-compete compensation. However, the first instance court did not rely solely on such failure to fulfil the Reporting Obligation to establish a breach of non-compete obligations, but conducted a detailed review and found that the Ex-employee had indeed engaged in competitive behaviours, and therefore ruled that the Ex-employee should assume liability for breach of non-compete obligations.
- In contrast, the second instance court overturned the previous ruling as it viewed that non-compete compensation is in consideration of the restriction on freedom of choice of employment due to the performance of non-compete obligations, rather than the performance of the Reporting Obligation. An employee's failure to fulfil such obligation is not equal to the breach of non-compete obligations, and thus should not become a basis for stopping the payment of non-compete compensation. Consequently, the Ex-employee's non-compete covenants are terminated due to the Employer's failure to pay non-compete compensation for more than three months. In such a case, whether there is a breach of non-compete obligations is no longer of concern.

The above second instance court's opinion is not an exception. It is commonly seen that courts believe that an employee's failure to fulfil the Reporting Obligation alone does not equal a breach of non-compete obligations, so if the employer stops paying non-compete compensation for three months or more on this basis, the employee can request to terminate the non-compete covenants and, as a result, the employer would be unable to claim breach of non-compete obligations after such termination.

Summary

To sum up, it is good for employers to protect their competitive advantages and confidential information by appropriately applying non-compete covenants, but it is advisable to consider the scope of employees for which to set non-compete obligations, in order to avoid misuse. When implementing non-compete covenants, employers are advised to pay attention to the relevant judicial scrutiny trends – eg, that judicial authorities will conduct substantive review of competitive relationships going beyond the business scope in the business licence and taking more factors into consideration (including actual business, audiences of product/service, employee's job with the new employer, industry practice, etc) – and employers need to prepare comprehensively in this regard in case of disputes.

With regard to Reporting Obligations, it is good to have such obligations stipulated in non-compete covenants in order to help track employees' performance of non-compete obligations after termination. However, employers should be cautious about stopping the payment of non-compete compensation based only on an employee's failure to fulfil the Reporting Obligation, as this may result in the employee's termination of the non-compete covenants.

Protection of workers' rights and interests under new guidelines for new employment forms

With the development of the platform economy and the need for more flexible employment, new forms of employment have developed and infiltrated more and more industries in recent years, and new laws and regulations are regulating these new forms, with the protection of workers' rights and interests being a key emphasis.

In May 2025, the All-China Federation of Trade Unions and six other departments jointly issued the Guidelines for Jointly Safeguarding the Legal Rights and Interests of Workers under New Forms of Employment ("Guidelines"). Article 10 of the Guidelines emphasises the need to focus on promoting development in emerging sectors and protecting the rights of workers under new forms of employment, proposing corresponding measures regarding consultation mechanisms, algo-

rhythm regulation and occupational injury protection. The key points under the Guidelines are as follows.

Promote the establishment of consultation mechanisms

In 2024, the Consultation Guidelines for Workers' Rights under New Forms of Employment ("Consultation Guidelines") were issued, stipulating measures to protect the rights and interests of workers under new forms of employment, including the consultation formats, limits on the number of consultation representatives, etc.

Local implementation situations vary by region. For example, in Beijing, organisations such as industry associations and trade unions are encouraged to establish industry standards and professional codes for employees for enterprises to protect workers' rights under new forms of employment. In Guangdong province, workers under new forms of employment are encouraged to join local trade unions.

Based on the Consultation Guidelines, the Guidelines further clarify the forms of consultation to include collective deliberation, deliberation and co-ordination meetings, and consultation forums.

Promote the standardisation of platform enterprises' algorithms and the formulation of new industry labour standards

A defining characteristic of the new employment forms is the use of platform algorithms in workforce control. Algorithmic rules replace traditional manual instructions in factory systems, encompassing core issues such as quality of order assigned, service pricing, waiting periods, dispatch durations and channels for lodging appeals. These algorithmic rules directly impact the fundamental labour rights of workers under new forms of employment, including the right to claim remuneration, the right to rest, occupational safety, etc.

The Guidelines propose to "formulate industry-specific labour standards tailored to the characteristics of platform-based employment models", indicating that future labour standards will differ from those applicable to traditional employees; specific implementation details are yet to be further formulated.

Promote resolution of the issue of injury protection for workers under new forms of employment

Workers under new forms of employment commonly face challenges of low wages, income instability and limited risk management awareness. They often care more about in-pocket salary, and may opt out of long-term social insurance in exchange for a higher wage standard, thus becoming a group of workers outside the national social insurance system in China.

Following the Guidelines, the Notice on Expanding the Pilot Programme for Occupational Injury Protection for Workers under New Forms of Employment ("No 24 Notice") came into effect on 1 July 2025. This new round of pilot programmes will extend coverage to 17 provinces based on the existing framework, while adding four additional platform enterprises. Meanwhile, the Implementation Measures for Occupational Injury Protection for Workers under New Forms of Employment (Trial Version) has been amended to explicitly include provisions addressing contribution benchmarks, streamlined processing procedures and other key components. At local levels, some provinces – such as Liaoning, Ningxia and Guangxi – have already initiated related work in accordance with the requirements stipulated in the No 24 Notice.

Summary

The Guidelines explicitly outline four major directions for protecting the rights of workers under new forms of employment:

- establishing consultative mechanisms;
- advancing industry-specific labour standards;
- addressing occupational injury protection issues; and
- improving complaint and appeal mechanisms.

In the coming years, both national and local governments are expected to successively develop corresponding implementation rules and standards. Platform enterprises and their co-operative partners are advised to pay close attention to these regulatory developments, and should endeavour to safeguard workers' basic rights while mitigating relevant legal risks during the operations and management of workers under new forms of employment.

Conclusion

The issues addressed in this article – including the implementation of the new retirement policy, trends in judicial practice for non-compete labour disputes and the protection of workers' rights and interests under the new employment forms – represent just a snapshot of the ongoing trends and developments in PRC employment law. Employers are encouraged to consider these topics carefully and stay focused on further changes and developments, to ensure ongoing compliance and effective management.

DENMARK



Law and Practice

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Bech-Bruun is one of the leading full-service law firms in Denmark. With its wide range of services, the firm serves a large section of the Danish corporate sector, the Danish public sector as well as international enterprises. Its labour and employment practice group, comprising more than 20 professionals, is ranked Band 1 by Chambers and Partners, and specialises in all areas of labour and employment law. The firm is currently advising Lægernes Pension & Bank, the pension provider for Danish doctors, in a

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1. Employment Terms

1.1 Employee Status

The Danish labour market is characterised (and distinguishes itself compared to other EU-countries) by the combination of a relatively high degree of social benefits and social protection on the one hand and a high degree of flexibility with respect to termination of employment and mobility between employers on the other hand (the so-called Danish “flexicurity” model).

The terms and conditions of white-collar employees are, to some extent, subject to negotiation between the employer and the employee and reflected in employment contracts, but to a large extent subject to employee-related Danish statutory regulations. A significant part of these statutory regulations is based on or implemented by EU Directives.

The statutory definition of a salaried (white-collar) employee according to the Danish Salaried Employees Act (in Danish: “*Funktionærloven*”) includes:

- office workers and shop assistants employed in office work, buying and selling activities, or equivalent warehouse operations;
- individuals whose work involves technical or clinical services (except handicraft or factory work) or comparable work functions; and
- individuals whose work wholly or mainly involves managing or supervising the work of others on behalf of an employer.

The specific legislation on white-collar employees covers such employees who have been continuously employed for more than one month and work at least eight hours per week on average. These employees are covered by specific legislation giving them minimum entitlements in areas such as notice periods, severance payments, unfair dismissal, sick pay, maternity pay and probationary periods.

By contrast, for blue-collar employees, such aspects of employment conditions are primarily regulated by collective agreements with no minimum statutory provisions. Collective bargaining agreements are most common in the building and construction industry and

trade industry, thus, blue-collar workers are commonly covered by collective bargaining agreements.

1.2 Employment Contracts

Within seven days of commencement of employment, employers must, with a few exceptions (such as in relation to seafarers), provide employees with written details of all essential conditions applicable to the employment relationship. This applies to employees where the predetermined or actual working hours amount to more than an average of three hours per week in a reference period of four consecutive weeks. If the employer fails to provide the required written details, the employee may be entitled to compensation.

The information provided must at least include:

- the name and address of the employer and employee;
- the place of work or, where there is no fixed or main place of work, a statement that the employee is employed at various places;
- a description of the work, or an indication of the employee’s title or grade, or the nature or category of the work;
- the date of commencement of the employment relationship;
- if the employment relationship is not open ended, its expected duration;
- when it comes to temporary agency workers, the identity of the user undertakings as soon as it becomes known;
- the duration and terms of any probationary period;
- the duration of the paid leave entitlement for the employee;
- the notice periods to be observed by the employee and employer;
- the employee’s pay, plus any allowances and other elements of remuneration (such as pension contributions);
- the dates of payment of remuneration; the length of the normal working day or week, or the number of working hours;
- if the work pattern is fully or partially unpredictable, the employer must notify the employee about the variable work schedule, guaranteed paid hours, payment for additional work, reference hours, mini-

- minimum notice period before starting a task, and any minimum deadline before task cancellation;
- the right to education offered by the employer, if applicable;
- details of any applicable collective agreements; and
- the identity of the social security institutions receiving contributions related to the employment relationship, and any employer-provided social security protection.

The information must be provided to the employee in writing through one of the following methods:

- given in a written statement; or
- sent electronically, provided that:
 - (a) the information is accessible to the employee;
 - (b) it can be stored and printed; and
 - (c) the employer retains documentation of the transmission or receipt.

With regard to paid holiday, notice periods, remuneration and working time, the employer may refer in the written details of employment conditions to relevant legislation or collective agreements governing these issues.

The employer must inform the employee in writing of any change in the above-mentioned employment conditions promptly and no later than the effective date of the changes. This does not apply where the change is caused by changes in legislation or collective agreements referred to in the written details.

Employment contracts may be for full-time or part-time work. Contracts can be concluded for an indefinite duration or for a fixed term – that is, ending on a specific date, when a specific task is completed or when a specific event occurs. Fixed-term contracts may be renewed only if there are objective reasons for doing so. There are several specific types of employment contract governed by particular rules, notably apprenticeship contracts.

1.3 Working Hours

Employees must not work more than 48 hours a week, calculated on average over a four-month reference period. The 48-hour limit includes overtime.

Employees are obliged to work a reasonable amount of overtime when this is necessary to carry on the employer's business. There are no statutory limits on the number of overtime hours, except that the 48-hour maximum week includes overtime, nor statutory rules on compensation for overtime. Overtime is usually regulated by collective agreements, which often contain provisions on prior notification to the employee if overtime work is required and on compensation. Overtime is usually compensated by either time off in lieu or a premium rate of pay.

Agreements on flexible working hours whereby overtime is compensated by time off are common. In some cases, especially for white-collar workers, it may be agreed as part of the employee's pay package that a reasonable amount of overtime work must be carried out without compensation.

Companies are required to implement a reliable working time registration system to measure each employee's daily working hours, ensuring compliance with requirements on rest periods and maximum working hours. Employees must have access to their data within the system to protect their rights.

1.4 Compensation

The main obligation for the employer in an employment relationship is to pay the employee for the work that they perform. Remuneration is deemed to include all elements of the pay package and all benefits agreed and provided to the employee as payment for work, including basic pay, overtime pay, paid holiday and holiday pay, bonuses, share incentives and taxable non-pay benefits such as employer-provided cars, newspapers and telecommunications facilities (such as mobile telephones and home computers and internet connections).

There is no statutory minimum wage in Denmark and, unless there is a collectively agreed pay arrangement in place, the employer and the employee are free to agree the pay terms.

There are no statutory provisions governing the frequency of payment of wages, and this issue is usually governed by collective agreements. However, the employer is required to state in the written details of

essential employment conditions provided to each employee the wage agreed and how often it will be paid. White-collar employees typically receive a fixed salary, paid monthly, while blue-collar workers are hourly paid and receive their wages every two weeks.

1.5 Other Employment Terms

Employees are entitled to a minimum of 25 days of paid annual leave. Collective agreements and individual employment contracts often provide for up to five additional days per year.

On 25 January 2018, a new Danish Holiday Act (in Danish: “*FerieLOven*”) was adopted and introduced “concurrent holiday”. From 1 September 2020, employees can take paid holiday in the same year that the holiday accrues. Employees are no longer required to work for one calendar year before the beginning of the holiday year to be eligible to take paid statutory holiday. The paid holiday entitlement of 25 days remains unchanged. Holiday is accrued at a rate of 2.08 days of leave per month of service during the holiday year, which runs from 1 September to 31 August. Accrued holiday can be taken in the period from 1 September to 31 December the following year (a period of 16 months).

The requirement to give three months’ notice for the main holiday and one month’s notice for any remaining holiday remains unchanged. However, it is no longer possible for an employer and employee to agree in advance in the employment contract to shorten the notice required for holiday to be taken.

The Act also introduces changes to the payment of holiday supplement, whereby employees who receive salary during their holiday are also entitled to be paid a holiday supplement amounting to 1% of their salary. The holiday supplement must be paid in two fixed instalments in May and August, or alternatively it can be paid at the same time as the holiday is taken. (Previously, the holiday supplement was paid in May each year).

Employees must generally take 15 days of their full leave entitlement consecutively in the summer period between 1 May and 30 September – this is known as the employee’s main holiday. The employer and

employee may agree to split the main holiday but at least ten days must be taken consecutively. The remaining entitlement should in principle be taken in two five-day blocks, but the employer and employee may agree that the entitlement can be taken as individual days.

2. Restrictive Covenants

2.1 Non-Competes

Introduction

The Danish Act on Restrictive Covenants (in Danish: “*AnsættelsesklausulLOven*”) applies to all employment clauses entered into on or after 1 January 2016. The Act applies to clauses agreed with employees, which means that directors, owners, consultants, and others in an independent position fall outside the scope of the Act.

Some provisions of the Act, however, have a broader scope of application, including for executive officers and similar positions – eg, an employment clause is invalid if the termination of the employment relationship occurs without the employee having given reasonable cause for it, or as a result of the employer’s material breach of the employment relationship.

Furthermore, a non-competition clause – or the non-compete element of a combined clause (cf below) – cannot be upheld if, in terms of time, geography, or other factors, it goes beyond what is necessary to protect the employer’s legitimate interests or if it unreasonably restricts the employee’s access to work or business opportunities.

Non-Competition Clauses

The following conditions must be fulfilled in order for a non-competition clause to be valid.

- An employer may only validly enter into a non-competition clause if the employee holds a particularly trusted position or if the employee enters into an agreement with the employer regarding the right of exploitation to an invention made by the employee.

- The employee must be informed of the circumstances of the employment that make it necessary to enter into a non-competition clause.
- The non-competition clause may validly be agreed upon before the commencement of the employment relationship, but it can only be enforced after six months of employment.
- An employee cannot be bound by the non-competition clause for more than 12 months after the termination of employment.
- If the non-competition clause is valid for up to six months, the employee must receive compensation equal to at least 40% of their monthly salary at the time of termination. For agreements with a non-competition clause lasting up to 12 months, the compensation must amount to at least 60% of the monthly salary at the time of termination. The full compensation for the first two months after termination (corresponding to either 40% or 60%, as mentioned above) is a lump-sum payment to which the employee is entitled, regardless of whether the employee obtains other suitable employment within the first two months.
- It is also a condition that the information about all of the above conditions is provided to the employee in writing.

If the employer terminates the employment relationship without reasonable cause, or if the employee resigns due to the employer's breach of the employment contract, the non-competition clause is invalid.

Set-Off When it Comes to Compensation

If an employee who is entitled to receive a compensation of 40% finds other suitable employment, the compensation may be offset against the new salary from the 3rd to the 6th month after termination, but the compensation can never amount to less than 16% of the monthly salary at the time of termination.

For agreements involving non-competition clauses with a duration of up to 12 months, the compensation must – as mentioned above – amount to at least 60% of the monthly salary at the time of termination. In cases of offset due to other suitable employment, the compensation must amount to at least 24% of the monthly salary at the time of termination.

Termination

The employer may terminate a non-competition clause agreement at any time with one month's notice to the end of a month. If the employee has been employed for more than three months and resigns within six months after the employer has terminated the non-competition clause, the employee is entitled to a lump-sum payment equal to two months' compensation. The employee is not entitled to the lump sum if they continue in their position.

This provision means that the employee may be entitled to the lump-sum compensation after just three months of employment, even if the six-month seniority requirement has not been met and the clause is therefore not valid.

Refer to **2.2 Non-Solicits** for a description of the so-called combined restrictive clause and the conditions that must be met.

2.2 Non-Solicits

Introduction

Non-solicitation of employees clauses are not valid in Denmark unless agreed upon in connection with a business transfer, in which case they are subject to duration limits.

A non-solicitation of customers clause – also comprised by the rules in the Danish Act on Restrictive Covenants – aims to prevent the employee from taking employment with or performing work for the former employer's customers, agents, suppliers, or other business partners after the termination of the employment relationship. A customer clause is therefore only directed at the employee's co-operation with specific business partners and, unlike a non-competition clause, does not generally aim to prevent the employee from engaging in competing business activities.

Non-Solicitation of Customers Clauses

The following conditions must be met in order for a non-solicitation of customers clause to be valid.

- The clause can only concern customers with whom the employee has had direct business contact within the last 12 months prior to the notice or termination date. Therefore, the clause cannot be

extended to cover the employer's former customers or current customers with whom the employee has not had direct business contact.

- The clause can only be enforced if the employee has been employed for an uninterrupted period of at least six months.
- An employee cannot be bound by the clause for more than 12 months after the termination of employment.

For a description of the mandatory compensation requirements, refer to **2.1 Non-Competes** under "Non-Competition Clauses".

Combined Restrictive Clause

A combined restrictive clause must satisfy both the conditions for non-competition clauses and for customer clauses, as set out in separate sections. However, a number of additional conditions must be met for combined clauses.

The combined clause may not have a duration of more than six months after the termination date. This means that the duration requirement is stricter than for separate non-competition and customer clauses, each of which may have a duration of up to 12 months.

Compensation must amount to at least 60% of the monthly salary at the time of termination. If the employee finds other suitable employment, the compensation from the 3rd to the 6th month after termination must amount to at least 24% of the monthly salary at the time of termination. If the employee loses the suitable employment, they will again be entitled to the full compensation of 60%.

The full compensation for the first two months after termination is a lump sum to which the employee is entitled, regardless of whether the employee obtains other suitable employment.

Protection Act (in Danish: "*Databeskyttelsesloven*"). These regulations apply to all stages of the employment relationship from recruitment to termination and are interpreted and enforced through guidance from the Danish Data Protection Authority (in Danish: "*Datatilsynet*"), including their HR-specific guidance on data protection in employment relationships.

Employers are considered data controllers and are required to have a valid legal basis for processing employee data, comply with principles such as data minimisation and purpose limitation, and respect employees' rights to access, rectification, and erasure. Among the practical obligations is the requirement to provide employees with a clear and transparent privacy policy that outlines how their personal data is collected, used, stored, and shared.

The Danish Data Protection Agency cannot issue fines directly; instead, it refers cases to the police for prosecution, and any monetary penalties must be imposed by a criminal court. While the GDPR sets a maximum fine level of up to EUR20 million or 4% of global turnover, the typical Danish fines in employment related GDPR cases have ranged between DKK50,000 and DKK150,000. The Danish Data Protection Agency has previously recommended fines amounting to DKK400,000 where the fine has been lowered by the Danish courts. Thus, fines in Denmark have historically been more modest compared to other EU countries, although enforcement activity is increasing.

Employers should also be aware that special rules may apply to the processing of sensitive data (such as health or union membership information), and certain types of employee monitoring (eg, email or location tracking) require a strong legal basis, clear documentation, and proportionality. Danish guidance places strong emphasis on transparency and data protection impact assessments, particularly in situations involving high-risk processing.

3. Data Privacy

3.1 Data Privacy Law and Employment

In Denmark, data privacy in the employment context is primarily governed by the EU General Data Protection Regulation (GDPR), supplemented by the Danish Data

4. Foreign Workers

4.1 Limitations on Foreign Workers

EU/EEA, Nordic Nationals

Individuals from other Nordic countries (Finland, Iceland, Norway, and Sweden) are free to reside and work in Denmark pursuant to an Intra-Nordic Agreement.

Individuals from EU member states, the EEA and Switzerland are also free to reside and work in Denmark pursuant to EU rules on freedom of movement of persons and services.

Such individuals performing work in Denmark, are obligated to apply for an EU residence document within the first three months of the stay in Denmark if the individual expects or intends to stay in Denmark for more than three months.

These individuals are also obligated to register with the Danish authorities if the individual expects or intends to stay in Denmark for more than six months.

The above individuals cannot and should not apply for a Danish work and residence permit.

Third-Country Nationals

For an individual from a third country to be eligible for working and residing in Denmark, he or she must apply for a Danish work and residence permit through the Danish Agency for International Recruitment and Integration (in Danish: “*Styrelsen for International Rekruttering og Integration*”).

Various special business schemes have been designed to make it easier for highly qualified and/or skilled employees to obtain a work and residence permit in Denmark. When working with these special schemes, it is essential that the individual from a third country (ie, the employee) obtains the Danish work and residence permit before commencing any work in Denmark.

With a Danish work and residence permit, the employee’s job profile may change within the same company which does not require the company to apply for a new work permit. The salary and employment conditions must still correspond to the Danish standards.

However, employees who are granted a work and residence permit under the so-called Positive List, are only allowed to work in the job to which they have been granted a permit.

A work and residence permit allows the employee to stay in Denmark for the period that the permit is valid. In addition, a permit allows the employee to stay in the Schengen area for up to 90 days within the latest 180-day period. The permit, however, does not allow the employee to work in other Schengen countries.

The Danish Immigration Authorities may at any time revoke or refuse to extend a work and residence permit if the legal grounds on which it was issued have changed – for example, if the individual from a third country has been terminated from employment, or if the work and residence permit was obtained through fraud or the like.

Employees, who change jobs while staying in Denmark, must apply for a new work and residence permit and must be submitted to the Danish Immigration Authorities before commencing work for the new employer. However, in some situations – according to “the job change rule” – the individual from a third country, who changes from one job in Denmark to another job in Denmark, may commence the new job upon submission of an application for a new work and residence permit based on the employment with the new employer. Consequently, the individual may commence work for the new employer before the processing of the application has been completed by the Danish Immigration Authorities.

A valid work and residence permit will usually lapse if the individual from a third country leaves Denmark for an extended period or is no longer residing in Denmark. If the employee needs to stay abroad for an extended period, for example, if the person is stationed abroad for a period, the employee may apply for a dispensation to prevent the permit from lapsing. However, with a work and residence permit based on the so-called Fast-Track scheme, the employee is exempted from these rules that can cause the permit to lapse and, accordingly, the employee is allowed to give up the Danish address if the person stays abroad for a period.

4.2 Registration Requirements for Foreign Workers

RUT (the Danish Foreign Service Provider Register) is a mandatory public register maintained by the Danish Business Authority, designed to monitor foreign service providers operating in Denmark. Any foreign company or self-employed individual providing services temporarily in Denmark must register in RUT before commencing work.

5. New Work

5.1 Mobile Work

The Danish Working Environment Act (in Danish: “*Arbejdsmiljøloven*”) also applies to remote work, placing responsibility on the employer to ensure a healthy and safe working environment – even when employees are working from home.

This responsibility can be met by ensuring that remote work is planned and organised in a way that allows it to be performed safely and healthily. Employers should provide employees with the necessary equipment to carry out their tasks effectively and safely from home. This may include computers, ergonomic furniture, and other essential tools.

In addition, employers must offer adequate training and instruction to ensure that employees are able to perform their remote work in a safe and healthy manner. This involves identifying potential risks and challenges associated with remote work and addressing them through proper guidance. Employers should maintain open dialogue with employees to discuss the planning and organisation of remote work, ensuring that any concerns are promptly addressed.

Employers must also be aware of specific requirements related to screen work if employees work from home more than two days per week on average. These requirements concern the workspace, monitor, and other fixtures, ensuring they meet established safety and ergonomic standards.

Although employers do not have direct access to inspect the physical conditions of employees’ homes, they are still required to conduct effective supervi-

sion and maintain open communication. This can be achieved through regular dialogue and workplace assessments (APV) tailored to remote work. If performance issues or other business-related concerns arise, employers retain the right to modify or terminate remote work arrangements.

In May 2025, the Danish Supreme Court ruled in a case involving a work-related injury during remote work, where an employee tripped over a box she had placed herself. The court classified it as a work-related injury, underscoring the importance of reviewing and potentially updating remote work policies. Such a policy should clearly outline the expectations and responsibilities of both employers and employees, ensuring compliance with legal requirements and safety standards. It can also help reduce the risk of employment-related disputes in cases of policy breaches.

5.2 Sabbaticals

Apart from the Danish rules on the right to absence from work due to pregnancy, maternity, paternity, and parental leave, any other form of sabbatical leave must be agreed upon between the company and the employee.

An employee is also entitled to absence from work when compelling family reasons arise in cases of illness or accident that make the employee’s immediate presence urgently necessary (force majeure).

5.3 Other New Manifestations

This is not relevant for Denmark.

6. Collective Relations

6.1 Unions

The dominant organisations in the Danish labour market are the Danish Trade Union Confederation (in Danish: “*Fagbevægelsens Hovedorganisation*”) and the Confederation of Danish Employers (in Danish: “*Dansk Arbejdsgiverforening*”).

6.2 Employee Representative Bodies

The Danish Act on Information and Consultation of Employees (in Danish: “*Lov om information og høring*”) implements EU Directive 2002/14/EC estab-

lishing a general framework for informing and consulting employees in the EU. The Act sets out a number of minimum requirements for how an employer must establish procedures for informing and consulting employees.

However, the Act does not apply if the employer's duty to inform and consult employees follows from a collective agreement or arrangement that contains provisions which, at a minimum, are equivalent to those of the directive. As a result, employers who are members of an employers' organisation under the Confederation of Danish Employers (DA) are not covered by the Act, since the Co-operation Agreement between DA and the Danish Trade Union Confederation applies.

In the public sector, employers are similarly covered by framework agreements on employee involvement, and potentially by one of the many co-operation (MED) agreements that exist in the public labour market.

6.3 Collective Bargaining Agreements

The respective organisations for employers and employees are, through membership, authorised to conclude collective agreements on behalf of their members, and the members of these organisations are bound by the agreements.

Collective agreements are widely concluded between the trade unions operating in the labour market. When employer organisations enter into agreements, those agreements generally apply to all member companies within the relevant sector. The same applies when employee organisations conclude collective agreements – the employee organisation thereby binds all its members to the agreement.

An employer may also independently enter into a collective agreement. However, it is only considered a collective agreement if the counterpart on the employee side represents a collective of employees. This collective must be indeterminate, meaning that the counterpart on the employee side could, for example, be the employees employed at any given time within the company. If, on the other hand, the company enters into an agreement with one or more specific employees regarding wages and employment conditions, this is not considered a collective agreement. Instead, it

constitutes individual employment contracts, albeit uniform in content. However, it does not take much for an agreement to be classified as a collective agreement.

Collective agreements are typically initiated either by employees at a company or by a trade union. This usually occurs when the employees or the union approach the company and present a demand for a collective agreement.

When a company is presented with such a demand, it should consider a range of options. The company should assess whether to join an employers' organisation, accede to an existing collective agreement, enter into a company-level agreement, or conclude a local agreement.

7. Termination

7.1 Grounds for Termination

Introduction

Termination of employment contracts is subject to only limited statutory regulation. All employees are protected from unlawful dismissal on a range of specific grounds. Otherwise only white-collar employees are covered by legislation on issues such as notice periods, unfair dismissal and severance payments.

Collective agreements covering white-collar employees may improve on these statutory provisions but cannot reduce them. For blue-collar workers, these matters are regulated only by collective agreements. While collective agreements cover a relatively high proportion of the workforce, there are employees who do not enjoy any protection against unfair dismissal by statute or collective agreement and are covered only by the provisions in their employment contracts (and the rules on anti-discrimination).

Collective Redundancies

The Danish Act on Collective Redundancies (in Danish: "*Masseafskedigelsesloven*") requires that employers inform the relevant regional Employment Council and inform and negotiate with the employees' representatives before any terminations can be effected in relation to collective redundancies.

Negotiations with the employees' representatives (or the employees) must be initiated with the intention to reach an agreement so that redundancies are either avoided or limited, eg, by replacing or retraining the employees in question. The only procedural requirement in relation to the negotiations is that the negotiations are real and not pro forma.

The rules apply when the number of employees to be dismissed over a period of 30 days is expected to constitute:

- at least 10 employees in businesses employing more than 20 employees and less than 100 employees;
- at least 10% of the employees in businesses employing more than 100 and less than 300 employees; or
- at least 30 employees in businesses employing more than 300 employees.

The days are counted from the date when notices are effected and not from the expiry of the notice period.

The number of employees employed in a business is calculated on the basis of the average number of employees employed during the four last preceding quarters. The average number of employees in a quarter is calculated by counting the number of employees at the expiry of each month. All employees are included in the calculation with the exception of the managing director and independent consultants (who are not considered to be salaried employees).

Employees, who enter into a voluntary agreement on the employer's initiative, are also included in the calculation of employees that are dismissed and would therefore also trigger the Collective Redundancies Act.

The general rule in relation to collective redundancies is that terminations cannot be effected before the employer has initiated an information and negotiation procedure with the employees' representatives.

Compliance with the requirements regarding collective redundancies is important, as a breach is sanctioned by payment of compensation and pos-

sible fines. Should the relevant Regional Employment Council believe that the rules have not been observed, the Regional Employment Council has the option of filing a police report.

The employer must initiate an information and negotiation procedure with the employees' representatives as soon as possible before any dismissals in accordance with the Collective Redundancies Act can be legally effected.

The purpose of the information and negotiation procedure is to reach an agreement on how to avoid or reduce the contemplated redundancies and to mitigate the consequences for the employees through activities aimed especially at redeploying or retraining employees made redundant.

The Collective Redundancies Act does not stipulate minimum requirements with regard to the length of the negotiations. Accordingly, the negotiations may be very short (a few days) with an aim to merely resolve points of dispute in relation to the practicalities of the redundancies.

As part of the information and negotiation procedure, the employer must provide the employees' representatives with all relevant information of importance to the mass redundancies and must in any event notify the employees' representatives in writing of:

- the reasons for the contemplated redundancies;
- the number and relevant categories of employees to be made redundant, and the period over which the projected redundancies are to be effected;
- the number and categories of employees normally employed with the employer;
- the criteria proposed for the selection of the employees to be made redundant; and
- whether the employees to be made redundant include employees having a right to redundancy payments in accordance with an individual or collective bargaining agreement, and if so the method for calculating these payments.

In addition to informing the employees' representatives, the employer must also inform the Regional Employment Council in three separate letters. The

information must be given in writing and shall include information on the contemplated redundancies and a copy of the above-mentioned information given to the employees' representatives. The information to the Regional Employment Council must be sent at the same time (ie, the same day) as the employees' representatives are informed.

7.2 Notice Periods

Notice Periods

In regard to white-collar (salaried) employees, employers must observe a statutory minimum notice period for dismissal of:

- one month during the first six months of employment; and
- three months after six months' employment, increasing by one month for every three years of service with the employer, up to a maximum of six months' notice.

These notice periods apply to the termination of open-ended contracts and also in cases where a fixed-term contract is terminated before its term. The notice periods must run until the last day of a calendar month.

White-collar employees must give at least one month's notice (up until the end of a calendar month) of resignation. The employer and employee may agree in writing that a longer period of notice must be given by the employee, but in this case the period of notice to be given by the employer must be extended correspondingly.

The above rules on notice periods do not apply if the work is of a purely temporary nature and the employment relationship does not exceed one month. In such cases, the employment relationship may be terminated without notice.

Legislation specifically allows for a white-collar employee and an employer to reach an individual written agreement to the effect that the employee may be dismissed with one month's notice after 120 days of sickness absence in any 12-month period (except in the case of pregnancy-related sickness). This applies only if the employee is still absent through sickness,

and the employer has paid the employee fully during the sickness absence.

In respect of blue-collar employees, notice periods are generally set by collective agreements and vary according to the agreement applicable. To take the example of one of the most important agreements, the Industrial Collective Bargaining Agreement between the Confederation of Danish Industry and CO-Industry (in Danish: "*Industriens Overenskomst*"), for manufacturing, it provides that, during the first six months of employment, neither the employer nor the employee is required to give notice of termination. After six months' service, the employer must give 14 days' notice, rising to:

- 21 days after nine months' service;
- 28 days after two years' service;
- 56 days after three years' service; and
- 70 days after six years' service.

Further, employees aged 50 and above are entitled to longer notice, this being:

- 90 days after nine years' service; and
- 120 days after 12 years' service.

The notice periods on the part of the employee are:

- seven days after six months' service;
- 14 days after three years' service;
- 21 days after six years' service; and
- 28 days after nine years' service.

With regard to both white- and blue-collar employees, employers must pay employees their usual pay during the notice period. This applies even if the employer releases the employee from his or her duties during the notice period. However, if this occurs, the employee is under an obligation during the notice period to seek other (non-competing) employment and take it up if available. If the employee finds such employment, the employer is generally entitled to offset the income from the new employment against the employee's pay during the remainder of the notice period (in any event, after the first three months of the notice period in the case of white-collar employees).

During the notice period, an employee is still bound by a duty of loyalty towards the employer.

Employees are entitled to payment in lieu of notice only if they are dismissed summarily and this dismissal is not reasonably justified by the employee's conduct, or if the employee resigns without notice as a result of a material breach of the contract by the employer.

An employer must also give an employee notice, equivalent to the applicable notice of termination, if it wishes to implement material changes to the employee's terms and conditions, and these changes are, or may be, to the employee's detriment.

Probationary Periods

For white-collar (salaried) employees, there is a statutory maximum probationary period of three months, which cannot be extended. It is for the employer to prove that the parties have agreed a probationary period, so such a period is normally specified in the employment contract. During the probationary period, the employer can terminate the employment relationship with at least two weeks' notice, while the employee can terminate the relationship without notice, unless otherwise agreed in the employment contract.

For other employees, the probationary period cannot exceed six months.

In fixed-term employment contracts, the probationary period cannot exceed one-fourth of the duration of the employment. However, the provision does not affect the rules regarding probationary periods for salaried employees.

In fixed-term employment contracts the maximum probationary period is also six months.

No additional probationary period can be agreed upon in connection with the extension or renewal of a fixed-term employment contract.

Collective agreements often contain provisions regulating this issue.

7.3 Dismissal for (Serious) Cause

Employers are entitled to dismiss both white-collar and blue-collar employees summarily without notice for gross misconduct such as unexplained absence, theft, engaging in competition with the employer, disloyalty, inappropriate behaviour or insubordination. Depending on the nature of the breach or misconduct, the employer may have to issue a warning first. If a white-collar employee is dismissed for gross misconduct, the employer is entitled to compensation for any loss incurred as a result. However, such cases are not very common because the burden of proof is on the employer.

Employees are also entitled to resign without notice in the event of a material breach of the employment contract by the employer. In all cases of summary dismissal or resignation, the party terminating the contract must do so swiftly and without delay.

7.4 Termination Agreements

For white-collar employees and senior executives, it is common for companies to enter into separation agreements that include, among other things, a full and final settlement of any claims the parties may have against each other. There are no mandatory rules governing such agreements, which means that the provisions of the Danish Contracts Act (in Danish: "*Aftaleloven*") apply. This includes the general clause that empowers Danish courts to set aside or modify any term deemed unreasonable or excessively burdensome. However, it is very rare for such agreements to be challenged, let alone set aside, by the Danish courts.

7.5 Protected Categories of Employee

Employers are prohibited from dismissing employees on the grounds of:

- their gender, race, skin colour, religion or belief, political opinion, sexual orientation, national, social or ethnic origin, age or disability, or on the grounds of the employee claiming equal treatment on the basis of these criteria;
- requesting equal pay;
- their part-time (or full-time) status, or because they have refused to move from full-time to part-time work (or vice versa), or have requested a move from full-time to part-time work (or vice versa);

- having made any claim under the legislation governing fixed-term contracts;
- pregnancy or pregnancy-related illness;
- requesting or taking pregnancy, maternity, adoption, paternity or parental leave;
- requesting or taking leave to care for seriously ill relatives;
- requesting or taking leave to perform national service;
- running as a candidate in municipal council elections or being elected to a municipal council;
- membership or non-membership of any trade union or a particular trade union; and
- making a disclosure under the whistle-blowing scheme.

If an employee is dismissed on any of these grounds, the employer must usually pay compensation to the employee, set by the relevant court or tribunal. The compensation is not subject to a maximum, but case law has established levels of compensation from six to 12 months' salary in cases of dismissal on the grounds of pregnancy, or requesting or taking maternity, paternity or parental leave, depending on the employee's length of service and the relevant circumstances.

In some circumstances – for example, dismissal for requesting or taking pregnancy, maternity, adoption, paternity or parental leave or requesting equal pay – employees may seek reinstatement. Reinstatement cannot be ordered if it is considered unreasonable in the circumstances to maintain or restore the employment relationship. In practice, reinstatement is rarely awarded.

Most collective agreements provide special protection against dismissal for workplace trade union representatives, providing that they may be dismissed only for “compelling” reasons. Many collective agreements also provide that representatives may not be dismissed before the relevant trade union and employer or employers' organisation have negotiated the terms of termination, or the union has had a chance to test the dismissal's fairness through industrial arbitration. Some agreements stipulate an extended period of notice for union representatives. However, in the event of gross misconduct, union representatives may be

dismissed without notice, in the same way as other employees.

8. Disputes

8.1 Wrongful Dismissal

White-Collar

White-collar (salaried) employees who have at least 12 months' continuous service with the employer may be dismissed only if this is considered to be reasonably justified by the conduct of the employee or the circumstances of the business. If the employer dismisses a white-collar employee in breach of this provision, it must pay compensation to the employee. The amount of compensation must be determined by the relevant court with regard to the employee's length of service and other circumstances. The compensation is generally capped at the employee's pay for half of the statutory notice period to which the employee is entitled but may be as high as:

- three months' pay for employees over 30 years of age;
- four months' pay for employees with at least ten years' service with the employer; and
- six months' pay for employees with at least 15 years' service with the employer.

White-collar employees must, at their request, be provided by the employer with a written statement of the reason for their dismissal.

Blue-Collar

With regard to blue-collar employees, general protection against unfair dismissal is provided only by collective agreements. Notably, the general agreement between FH (the Danish Trade Union Confederation) and DA provides minimum rules in this area for much of the private sector. The agreement provides that “no arbitrary action shall take place in connection with dismissals” and that dismissal should be warranted by the situation of the employee or of the company. The agreement lays down a procedure for claiming unfair dismissal, as follows.

- Employees with at least nine months' continuous service with the employer are entitled to request the reason for their dismissal in writing.
- If an employee claims that the dismissal is unfair and unwarranted by his or her own situation or that of the company, the employee can seek to have the matter settled by representatives of the employer and of the relevant local trade union. These negotiations must normally be completed within two weeks of notice of dismissal being given.
- If no agreement is reached in the local talks, the relevant trade union or the employer can refer the matter to negotiations between the national union and national employers' organisation.
- If the national talks do not resolve the matter, the relevant trade union or the employer can, within seven days, refer the case to a special joint dismissals tribunal (*Afskedigelsesnævnet*) set up by the central trade union and employers' organisation. The decisions of such tribunals are binding and enforceable by the courts.
- The dismissals tribunal hears the case and makes a "reasoned award". If it finds the dismissal unfair, and unwarranted by the situation of the employee or the company, it may award reinstatement or compensation for the employee. The amount of compensation depends on the circumstances of the case and the employee's length of service, but is capped at 52 weeks' pay. Reinstatement cannot be ordered if there has been a breakdown in relations between the employer and the employee such as to preclude any continuation of the employment relationship.

The above unfair dismissal procedure applies only to blue-collar employees with at least nine months' service with their employer.

Thus, with regard to both white- and blue-collar employees, whether rules are based on legislation or collective agreements, employers may generally terminate an employment contract only (if the employer is to avoid having to pay compensation) if this is justified by the circumstances of the employer's business or the conduct of the employee.

Justifiable circumstances relating to the employer's business notably include a shortage of work (that is, redundancy) for financial or operational reasons. If the employer is able to prove a need for staff reductions, such dismissals will usually be considered reasonably justified.

Dismissal on the grounds of an employee's conduct covers, for instance, under-performance, disloyalty and lack of co-operation. In the majority of such cases, for the dismissal to be fair, the employer must give one or more written warnings before moving to dismissal, to allow the employee to remedy the situation.

The remedy for unfair dismissal is usually compensation. While reinstatement is an option, especially for blue-collar employees, it is rarely awarded in practice.

8.2 Anti-Discrimination

Refer to 7. Termination.

8.3 Digitalisation

There are no rules specifically governing the digitalisation of employment disputes.

9. Dispute Resolution

9.1 Litigation

Any cases related to breaches of the statutory rules relating to dismissal are generally dealt with by the ordinary civil courts. Most civil proceedings take place in the district courts. There are 24 district courts in Denmark. An appeal from a district court lies with the High Court of Western Denmark or the High Court of Eastern Denmark. The High Court of Western Denmark handles all appeals from the district courts of Jutland, whereas all judgments from the Zealand district courts, including the Copenhagen City Court, are handled by the High Court of Eastern Denmark.

The Supreme Court is a court of appeal for judgments and interlocutory orders made by the High Courts, including the Maritime and Commercial Court. In appeal cases both the factual and legal circumstances of the case are heard.

Where rules are based on collective agreements, individual cases are normally dealt with by tribunals and procedures set up by employers' organisations and trade unions themselves, breaches of collective agreements are dealt with by the Labour Court (in Danish: "*Arbejdsretten*").

In alleged cases of discriminatory dismissal, the employee may seek redress through the statutory Board of Equal Treatment (in Danish: "*Ligebehandlingsnævnet*").

9.2 Alternative Dispute Resolution

In individual employment contracts, the parties may include an arbitration clause stipulating that any disputes will be conclusively resolved through arbitration. The main advantages typically cited for arbitration clauses are the potential for faster proceedings and the resolution of disputes without public exposure. However, arbitration can often be more complex than court proceedings, as arbitration awards are not subject to appeal. Moreover, arbitration can be expensive, as the parties are responsible for covering the costs associated with the arbitration tribunal. Additionally, employees are typically not eligible for legal aid in arbitration cases.

Despite the inclusion of an arbitration clause, questions may later arise as to whether one of the parties can instead bring the matter before the ordinary courts. Under the rules of the Danish Arbitration Act (in Danish: "*Voldgiftsloven*"), courts are required to dismiss cases that, by mutual agreement, are designated for resolution through arbitration. This provision must be considered alongside Section 21 of the Salaried Employees Act, which stipulates that the Act cannot be modified by agreement to the detriment of the employee. An arbitration agreement may be considered detrimental to the employee's legal position, particularly due to its financial implications.

Several Danish court decisions suggest that clauses requiring arbitration for disputes concerning the interpretation of an agreement do not necessarily preclude claims involving violations of the Salaried Employees Act from being brought before the courts. This determination depends on the specific circumstances of each case, including whether the Salaried Employees Act applies, whether the clause is clear and explicit, and whether it has been clearly agreed upon by the parties.

9.3 Costs

The costs connected with a lawsuit in Denmark are:

- court fees;
- costs connected with the litigation, including preserving evidence – eg, expert opinions, witness fees, translations, etc; and
- legal fees.

A party must pay all costs connected with a lawsuit, at least until the case has been closed.

As part of the judgment, the court awards costs to the winning party. As a general rule, the unsuccessful party must reimburse the other party for all costs connected with the lawsuit. In reality, the successful party's costs are only partly reimbursed, the reason being that only court fees and costs connected with expert witnesses, etc, are covered in full, whereas legal fees – ie, lawyers' fees – are awarded discretionarily on the basis of the amount in dispute. A party must therefore be prepared to bear parts of his/her own costs, even if the party succeeds in the lawsuit.

The court may, under specific circumstances, decide to derogate from the general rule that the unsuccessful party bears all costs, for instance, if the case is of general public importance. Another reason could be that both parties are responsible for the dispute leading to the lawsuit.

DOMINICAN REPUBLIC



Law and Practice

Contributed by:

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Hernández Contreras & Herrera has two main areas of expertise which are labour and employment law and immigration law. However, the firm also handles matters related to real estate law, family law (inheritance, divorce, etc), and incorporation of companies. There are three main partners: Carlos Hernández Contreras, specialised in labour and employment law; Matilde Guerrero, dedicated to three areas of law – immigration law, family law and real estate law;

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1. Employment Terms

1.1 Employee Status

The law in the Dominican Republic (DR) makes no distinction between white-collar workers and blue-collar workers. Both groups are given the same treatment, except for overtime. Those in managerial and supervisory positions are not entitled to overtime.

1.2 Employment Contracts

There are three categories of employment contracts.

1. The permanent employment contract, which applies to so-called permanent employees of any company, and its main distinguishing feature is that it has no end date, and its second distinguishing feature is that it is more expensive (for an employer) than all other types of contracts, because it ultimately entails the payment of employment benefits (notice and severance pay) to the employee. In addition, during its term, it entails the payment of certain rights that are not present or are conditional in other employment contracts: vacation, Christmas bonus, and profit sharing.

2. The second category corresponds to so-called fixed-term employment contracts (also called “fixed-term” or temporary contracts), which are characterised by the fact that when they are agreed upon, the date or event that will lead to their termination is known. Therefore, in these employment contracts, when they end, the employer is not obliged to pay employment benefits (advance notice and severance pay) or the financial assistance provided for in Article 82 of the Labor Code. In addition, during the term of these contracts, there are rights that are not provided for or are conditional: the vacation entitlement provided for in Articles 179 and 180 of the Labor Code does not apply; the profit sharing provided for in Article 223 of the Labor Code does not apply; the Christmas bonus only applies if the contract exceeds six months; and annual vacations only apply if the contract extends to one year. These contracts are commonly referred to as “temporary” and are as follows.

- Contract for specific work or service (Articles 31 and 72 of the Labor Code) – this contract is used for specific work or service in a temporary project. For example, the installation of software that will

require several months of implementation; and training in the use of a new operating system, which is expected to last only several months. The most common sector in which this contract is used is housing construction.

- Contract for annual seasonal work (Article 29 of the Labor Code) – this contract is used for work that is repeated each year on a scheduled date depending on the rhythm of the seasons (fruit picking during the agricultural harvest) or depending on the rhythm of the company’s commercial activities (Christmas season in retail; “high” tourist season in the hotel sector).
- Fixed-term employment contract (Article 33 of the Labor Code) – this contract is basically used to replace employees on sick leave, vacation, or temporary disability, or when it is in the interests of the worker.
- Contract for accidental and temporary needs (Article 32 of the Labor Code) – used “when the work is intended to temporarily intensify production or responds to accidental circumstances of the company, or its need ceases at a certain time.”

3. The third category of employment contracts are the so-called special employment contracts, which are subject to a special regime applicable to each one:

- agricultural workers;
- home workers;
- domestic workers;
- those relating to maritime transport;
- the work of minors;
- those relating to vocational training, apprentices and trainees;
- those relating to disabled persons; and
- those relating to flight crew in air transport.

All employment contracts that are not for an indefinite period must be in writing. In the case of foreign employees, the Ministry of Labor will require that the contract be in writing, even if the relationship is for an indefinite period; otherwise, a work visa will not be issued.

1.3 Working Hours

The “normal working day” applies to most employment contracts, except for persons and positions expressly

excluded and except for those jobs and companies that are governed by special working hours, as permitted by the Labor Code or by the Ministry of Labor through express authorisation. This working day is governed by the following parameters.

- It is limited to eight hours per day and 44 hours per week. However, the law allows these limits to be exceeded on condition that the employer pays overtime for more than 44 hours as follows: “for each hour or fraction of an hour worked in excess of the working day with an increase of not less than 35% of the normal hourly rate.”
- Unless otherwise agreed by the parties, the working day “must be interrupted by an intermediate rest period, which may not be less than one hour after four consecutive hours of work and 1½ hours after five consecutive hours of work.” In practice, it is common for companies to interrupt the working day with a one-hour or 1½-hour lunch break, and in the industrial and free trade zones, in addition to the lunch break, two further breaks are added, one of 15 minutes in the middle of the morning and another of more than 15 minutes in the middle of the afternoon.
- Unless the parties choose a day other than Saturday, the weekly workday shall end at 12 noon on Saturday, followed by an uninterrupted weekly rest period of 36 hours, comprising part of the second half of Saturday and the entire Sunday.
- If the parties agree that the weekly rest period shall begin on a day other than Saturday, the following shall apply.
 - (a) In the case of an employee who works from Tuesday to Sunday and has Mondays off, ending their workday on Sunday at 12:00 a.m. and returning to work on Tuesday at 2:00 p.m., their weekly rest period would be 38 hours, consisting of 24 hours on Monday + 14 hours on Tuesday.
 - (b) In the case of an employee who works from Wednesday to Monday and has Tuesdays off, ending their workday on Monday at 10:00 p.m. and returning to work on Wednesday at 2:00 p.m., their weekly rest period would be 40 hours, consisting of two hours on Monday + 24 hours on Tuesday + 14 hours on Wednesday.
 - (c) And let us assume the case of an employee

who works Monday through Saturday and has Sunday off which is the most typical case ending their workday on Saturday at 6:00 p.m. and returning to work on Monday at 8:00 p.m. Their weekly rest would be 38 hours, consisting of 6 hours on Saturday + 24 hours on Sunday + 8 hours on Monday.

- In none of these cases is the increase provided for by law payable, as in all cases the 36 hours of weekly rest are exceeded.
- Nor are they obliged to pay double for work on Sundays, as they have legitimately set another day of the week for weekly rest.

The normal working day does not apply, unless otherwise agreed, to:

- workers acting as representatives or agents of the employer;
- workers in management or supervisory positions;
- workers in small rural establishments operated by members of the same family or by a single person;
- persons in positions of trust;
- workers who perform intermittent work or work that requires their presence at the workplace;
- workers employed in transport vehicles providing an intermittent service;
- workers employed in transport vehicles providing a service between two or more municipalities and whose work is remunerated by a fixed salary, per trip, or by another form of compensation;
- farm workers;
- maritime transport workers; or
- air transport flight crew.

The law allows for the normal limits of eight hours per day and 44 hours per week to be exceeded in the following cases.

- “In companies where work is continuous due to the nature of the work itself, staff must work in shifts of 8 hours. In these cases, the working day may be extended by 1 hour, but the weekly average may not exceed 50 hours in any case, with overtime paid for hours worked in excess of 44 hours per week.”
- “By agreement between the employer and their workers, continuous working hours may be estab-

lished, provided that they do not exceed 10 hours per day in commercial activities and 9 hours in industrial activities, and in no case may the working week exceed 44 hours.”

- “For agricultural, industrial agricultural, livestock, or forestry companies, all provisions of this Code shall apply, with the exception of those relating to working hours... In any case, the working day shall not exceed 10 hours.”
- “Workers who perform intermittent work or whose presence is required at the workplace... These workers may not remain at their place of work for more than 10 hours per day.”
- “The working day of workers employed in transport vehicles providing intermittent services or between two or more municipalities may not exceed 10 hours per day or 60 hours per week.”

In relation to all these cases in which the law allows the normal working day to be exceeded, it should be clarified that in the first two cases (continuous operation companies and continuous working days) these are companies and workers subject to the ordinary working day and therefore subject to overtime pay when exceeding 44 hours per week.

This is not the case for the other cases, which are outside the scope of the ordinary working day, meaning that it does not matter if they exceed 44 hours and reach 60 hours, as in any case no overtime will have to be paid.

The other relevant clarification is that these limits of ten hours per day and 60 hours per week should in no way be interpreted as limits from which overtime begins to be calculated. Overtime will always be paid from 44 hours per week, with the increase provided for in Article 203 of the Labor Code.

1.4 Compensation The Minimum Wage

The minimum wage in accordance with Resolution CNS-01-2025, of the National Wage Committee, is as follows.

- Large companies – 151 workers and upwards or gross sales over DOP288,351,329.30, with a mini-

mum salary of DOP27,988.80 as of 1 April 2025 and DOP29,988.00 as of 1 February 2026.

- Medium-size companies – 51 to 150 workers and gross sales of DOP288,351,329.30, with a minimum wage of DOP25,656.96 as of 1 April 2025 and DOP27,489.60 as of 1 February 2026.
- Small companies – 11 to 50 workers and gross sales of DOP77,084,018.72, with a minimum wage of DOP17,193.12 as of 1 April 2025 and DOP18,421.20 as of 1 February 2026.
- Micro-enterprises – up to ten workers and gross sales of DOP11,419,854.62, with a minimum salary of DOP15,860.32 as of 1 April 2025 and DOP16,993.20 as of 1 February 2026.
- Private vigilants (private security guards usually hired by companies) – minimum salary of DOP22,990.80 as of 1 April 2025 and DOP24,633.00 as of 1 February 2026.
- Farm workers – minimum daily wage for an eight-hour workday of DOP666.40 as of 1 April 2025 and DOP714.60 as of 1 February 2026.

The classification of companies according to their size is provided in Resolution 79-2025, on indexation of the annual gross sales value for the classification of companies, of the Ministry of Industry, Commerce and MSMEs (MICM), which is issued every year, in compliance with Law 488-08, which establishes the regulatory regime for MSMEs.

According to Article 2-Bis (as amended by Law 187-17) of Law 488-08, which establishes the regulatory regime for MSMEs, all institutions in the country – MT, TSS, DGII, etc – that implement regulations aimed at MSMEs, “shall [be classified] by size... established in... the present law.”

Minimum wage rates are reviewed every two years by the National Wage Committee, after consulting with the most representative employer and worker associations.

Participation in the Profits of the Company

According to Article 223 of the Labor and Employment Code, it is mandatory for every company to grant participation equivalent to 10% of the annual profits or net profits to all its workers for an indefinite period.

The individual participation of each employee may not exceed the equivalent of 45 days of ordinary salary for those who have served for less than three years, and 60 days of ordinary salary for those who have served for three or more years.

When the employee does not render services during the entire year corresponding to the fiscal year, the individual participation will be proportional to the salary of the time worked.

“The determination of the worker’s individual participation in the company’s profits shall be governed by the following rules:

a) If the employee has less than one year of continuous service, the total amount of ordinary wages earned in the months worked during the social or fiscal year of the company shall be divided by 12 and the quotient shall be divided by 23.83, and the result of this division shall be multiplied by 45.

b) If the employee has 1 year or more of continuous service in the company, but less than 3, the average daily salary will be multiplied by 45.

c) If the employee has 3 or more years of continuous service in the company, the rules established in Article 32 of these Regulations shall be applied and the average daily salary shall be multiplied by 60.

d) If the employee has 3 or more years of continuous service and for any reason the labor relationship is terminated, the total amount of ordinary salaries accrued in the months worked during the social or fiscal year of the company will be divided by 12 and the quotient will be divided by 23.83, and the result of this new division will be multiplied by 60.

e) If the company’s profits are not sufficient to cover the 45- or 60-day limit set by Article 223 of the Labor and Employment Code, the amount to be distributed shall be divided by the total amount that would have corresponded to the workers had the aforementioned limit been covered, and the quotient obtained shall be multiplied by the individual participation of each worker.”

Christmas Salary

The Christmas wage consists of one twelfth of the ordinary salary earned by the employee in the calendar year. And for its calculation and payment of overtime, night work, participation in the company’s profits, and any other extraordinary benefits are excluded.

Payment of the Christmas Salary will be made no later than 20 December, even if the contract of employment was terminated earlier and regardless of the cause of termination.

On the other hand, it must be considered that for the calculation of the Christmas salaries, the calendar year must be taken into consideration, and not the last year of service of the employee.

Thus, for example, if an employee started work on 30 October 2023, and their Christmas salary is payable in December 2024, they add what they have earned from 1 January to 31 December 2024 (the calendar year), and the resulting amount is divided by 12, which will be their additional Christmas salary.

1.5 Other Employment Terms Vacations

Vacations are obligatory and paid annually, and the worker is entitled to such for each year of service rendered. Its duration is determined by law. The characteristics of annual leave are as follows.

- It is annual leave, which the worker acquires “each time he/she has a year of uninterrupted work in a company”. And it is renewed each time the worker completes a year of service in the company; that is, the year of service that gives rise to the vacation does not coincide with the calendar year.
- It is a mandatory rest, which means that it cannot be agreed to suppress, reduce, compensate or substitute the vacation period or divide it except if the rest period is not less than one week or six working days.
- It is a right and a duty, which means that during the vacation period the worker cannot render services, paid or unpaid, to any employer.
- It is a prepaid vacation. The salary corresponding to the vacation period must be paid to the employee the day before its commencement, with

any other salary earned up to that date and shall comprise payment in legal tender, including the cash equivalent of any payment in nature, if any.

- The “regular remuneration” paid on vacation is part of the regular salary, even if the worker does not render services during the vacation.
- The annual leave is a 14-working day break paid as follows:
 - (a) after continuous employment of not less than one year and not more than five years, 14 days’ salary; and
 - (b) after continuous employment of not less than five years, 18 days’ salary.

Maternity Protection

The legal protection of maternity begins from the moment the worker informs her employer of her pregnancy and extends for the duration of the maternity leave (which is 14 weeks, and its beginning normally coincides with the date of delivery) and up to six months after the date of delivery. During this time the employer cannot exercise a Justified Dismissal (for serious misconduct and without payment of labour benefits) if it does not have authorisation from the Ministry of Labor. However, the employer may exercise the Dismissal (termination with payment of labour benefits) if three months have elapsed since the date of delivery and if the 14 weeks of maternity leave have been exhausted.

The notice of pregnancy can be given orally, provided that the employer is subsequently notified by any reliable means, with the presumed date of the report. However, if the pregnancy is notorious, the employer could not allege ignorance, and therefore it is deemed to be communicated to the employer, the same as if the worker proves by any means, that her employer was aware of the pregnancy.

In a general sense, the legal protection of maternity implies the following.

- During the period of pregnancy, the worker cannot be required to perform work that requires physical effort incompatible with the state of pregnancy.
- In cases of night work, the employer shall take the measures set forth in ILO Convention 171 on night work.
- If, because of pregnancy or childbirth, the work the expectant mother or mother performs is detrimental to her health or that of the child, the employer is obliged to facilitate the worker to change jobs. If the change is not possible, the worker is entitled to unpaid leave, without prejudice to maternity leave.
- In case of incapacity before the maternity leave, the worker will be entitled to receive the common sickness benefit until 35 weeks of pregnancy. Any request for leave required after 35 weeks will be considered prenatal and therefore will be entitled to maternity and lactation allowance
- Pregnancy entitles the employee to 14 weeks of maternity leave, of which at least six weeks must be postpartum.
- During maternity leave, the employee will receive the maternity and breastfeeding allowances established by the SDSS, supplemented by a payment to be paid by the employer.
- During maternity leave and if the worker averages the last six months of salary above the contributable salary ceiling, it will be the employer’s responsibility to cover the difference so that the worker receives the ordinary salary in accordance with the provisions of the first paragraph of Article 239 of the Labor and Employment Code.
- During the maternity leave the affiliated worker and the employer must continue contributing to Social Security under the same conditions and proportions established in Articles 56 and 140 of Law 87-01.
- When a female employee requests the granting of her vacation immediately after maternity leave, the employer is obliged to grant her request.
- During the breastfeeding period, the worker has the right, in the workplace, to take three paid breaks during her working day, of at least 20 minutes each, to breastfeed her child, or to a daily reduction of working time for breastfeeding her child.
- The dismissal (termination with payment of labour benefits) exercised by the employer during the period of gestation of the worker and up to three months after the date of delivery and during the period of maternity leave is null and void
- Any dismissal (dismissal for serious misconduct and without payment of labour benefits) of a pregnant woman or within six months after the date of

delivery must be previously submitted to the Labor Department, in order for it to determine whether it is due to the fact of pregnancy or is a consequence of childbirth, otherwise the dismissal is considered null and void.

- During the first year of the child's birth, the worker may have half a day each month, at her convenience, to take the child to pediatric care.

Causes for Suspension of the Contract of Employment

Among the causes for suspension of the contract of employment that do not require the approval of the Ministry of Labor are the following.

- Mutual consent of the parties.
- The fact that the employee is fulfilling legal obligations that temporarily prevent him/her from rendering services to the employer.
- Detention, arrest or imprisonment of the worker, resulting in the impossibility of rendering the agreed service.
- The worker's illness that makes him/her temporarily unable to perform his/her work.
- Occupational accidents, when they only cause temporary disability.
- Absences of the employee.
- Marriage leave.
- Leave of absence due to the death of a family member.
- Parental leave.
- The death of the employer, which causes the temporary closing of the company or establishment.
- Maternity leave provided for in Article 236 of the Labor and Employment Code.
- Half a day per month for pediatric care.
- Lactation periods.
- Half working days per week during the notice period.

And among the causes of suspension that require authorisation from the Ministry of Labor are as follows.

- Acts of God or force majeure, if they have as a necessary, immediate and direct consequence the temporary interruption of the work.
- Lack or insufficiency of raw materials, if it is not attributable to the employer.

- Lack of funds for the normal continuation of work, if the employer fully justifies the impossibility of obtaining them.
- Excess production in relation to the economic situation of the company and market conditions.
- Unaffordability of the company's operation.
- The strike and work stoppage qualified as legal, do not require a resolution from the Ministry of Labor. However, to be developed within the framework of the law, they require the Ministry of Labor to be informed and to participate, exhausting a series of steps provided for in the Labor and Employment Code.

Illness of the Worker

If the employee is affected by an illness that prevents him/her from offering the services to which he/she committed themselves, his/her contract of employment is suspended, and this suspension releases the employer from paying the agreed salary.

From that moment on, if the worker was duly affiliated to the social security system, he/she will be entitled to the so-called common illness subsidy. And if he/she is not affiliated to the social security, the employer must assume the coverage of the social benefits that would have corresponded if he/she had been affiliated, or simply must commit to the payment of the agreed wages even if he/she does not receive the service rendered, in addition to having to assist the worker by making up for the lack of affiliation to the social security.

For the worker to receive the common illness subsidy, it is not enough that he/she be affiliated to the social security system. A series of formalities and procedures must be carried out jointly by the affected worker and his/her employer, with the participation of the Superintendence of Health and Labor Risks (SISALRIL).

Another relevant aspect is that during the suspension for illness, although the employer is released from paying the agreed salary, it happens that after carrying out all the procedures related to the common illness allowance, and after SISALRIL fixes the amount of the allowance, said employer is obliged to pay the allowance in question, and then expects a reimbursement

that is credited to a bank account registered at the time of the request for the allowance, and this reimbursement is paid by and at the expense of SISALRIL.

Thus, for example, if an employee is incapacitated for 15 days in a month, eventually, during that month he/she will not be paid for those 15 days of absence. However, in 45 to 60 days, which is the average time that SISALRIL is currently taking to approve the subsidy, the employer will have to pay the employee the amount fixed by SISALRIL and then wait for the reimbursement from SISALRIL.

If such payment instruction has not been received from SISALRIL, the employer is not obliged to pay the agreed salary.

2. Restrictive Covenants

2.1 Non-Competes

In practice, so-called post-employment non-competition agreements abound, whereby:

- the employee undertakes not to compete with his/her former employer after the termination of the contract of employment;
- he/she undertakes to maintain the same confidentiality that he/she maintained during the contract of employment, but also after the termination of the contract; and
- he/she undertakes not to work in companies that compete with his/her former employer.

These agreements even go as far as to prohibit the employee from doing business on his/her own account in his/her former employer's area of business.

It could be argued that such agreements are contrary to Fundamental Principle II of the Labor and Employment Code, according to which "everyone is free to engage in any profession and trade, industry or commerce permitted by law. No one may prevent others from working or force them to work against their will", contrary to Article 47.10 of the Labor and Employment Code, which states that "it is forbidden for employers... to perform any act that restricts the rights that the worker has under the law," which violates the right

to work and the freedom to work, protected by Article 62 of the Constitution.

The downside of all this is that these post-contract-of-employment clauses are already universally accepted in the countries that set the standard in international law in these times of globalisation.

Indeed, these agreements were initially admitted by US case law, and subsequently, practically all Western European countries have also admitted them, albeit subject to conditions that have been outlined both by US case law and European case law, and these are the conditions.

- That the work restriction be limited in time: one or two years, for example.
- That the restriction has a geographic limit. For example, in the Dominican Republic only; or, for example, in the hotels of the Eastern region, or that a sector or industry be limited, let us say, the pharmaceutical sector.
- That the former employer pay a severance payment to the employee who will be temporarily prevented from employment, and such payment may be a single sum at the time of termination of the contract of employment, which is in addition to the employment benefits, or else a sum paid periodically for as long as the work restriction lasts.
- The restriction is justified by business necessity or potential harm. For example, the possibility of transferring knowledge to competitors.

In addition to these jurisprudential precedents admitted in other countries, Dominican Republic legislation allows the restriction to work post contract of employment, in very special cases, and always subject to a compensatory indemnity.

These are the cases of the members of the Board of Directors of the Dominican Telecommunications Institute (INDOTEL), who for a period may not be employed in companies of the telecommunications sector. The same applies to the members of the Monetary Board.

In such cases, the applicable regulations provide for the payment of benefits to compensate for this restriction on freedom of work.

2.2 Non-Solicits

Such clauses are rare. There are also no legal precedents that could serve as guidance. Furthermore, there are no provisions on this matter in the Labor Code or its supplementary regulations.

3. Data Privacy

3.1 Data Privacy Law and Employment

The law provides the “Prohibition on the use of data. No private entity may collect, capture, process and use biometric data of a person or a client, unless the following conditions are met: 1) It informs the person, in writing or by electronic means, that his biometric data is being collected or stored; 2) It informs the person, in writing or by means, of the specific purpose and duration of the term for which his biometric data is being collected, stored and used; 3) The person grants his explicit, free, specific, informed and unequivocal consent to the processing of such biometric data.”

This means that the company that uses or intends to use telematic means that store biometric data of employees must obtain prior written consent from the employee. The same law grants a term of 60 days to eliminate the biometric database or, failing that, to obtain the employee's consent.

4. Foreign Workers

4.1 Limitations on Foreign Workers

80% of the workers in a company must be Dominican, and at least 80% of the total salaries paid by employers must be received by Dominican workers. Foreign technical workers providing management and administrative services are exempt from these provisions.

4.2 Registration Requirements for Foreign Workers

80% of the workers in a company must be Dominican, and at least 80% of the total salaries paid by employers must be received by Dominican workers. Foreign technical workers providing management and administrative services are exempt from these provisions.

The process for hiring foreigners usually begins with a letter of employment offer, which is given to the candidate, who must then return to their country of origin and go to the Dominican embassy, which, based on that letter of offer, will issue an NM1 visa (which always precedes the work visa).

Once they have this visa, the employee returns to the Dominican Republic, where the General Directorate of Migration (DGM) will issue a work visa or RT-3 visa, subject to a series of conditions and formalities required by the DGM on the one hand and the MT on the other.

Basically, among other things, the signing of a written employment contract, medical examinations, and evidence of the company's good standing with the MT through SIRLA (the digital platform – *Planilla del personal fijo*) are required.

At the same time, the following practices are highly frequent.

- If the relationship has just begun or has already been in place for some time, it is advisable to contract health and work accident insurance for the immigrant employee, through a private insurance company with coverage as similar as possible to the Family Health Insurance and the Labor Risks Insurance of Law 87-01, on Social Security.
- As for the payment of remuneration, if the company or employer operates informally, it will have no major inconvenience in paying the immigrant employee.
- However, if the company is formalised in DGII, TSS and MT, it will be impossible to pay the immigrant as an employee. The best thing to do is to pay and deduct taxes as independent services, until their employee status is regularised.
- When the person is already in the country with the NM1 visa (which is different from the tourist visa, which means that a job offer has already been made) he/she can start working immediately, while the residence card is being processed (which takes about four months), and there are two ways to formalise his/her hiring.
 - (a) The first is to register with the Social Security Treasury. However, this affiliation is only

nominal, ie, it does not offer you insurance coverage. However, it allows the company to place you on the payroll and to consider you, from now on, as an employee. In this case, it is advisable to contact an insurance broker to open a health insurance and an occupational accident insurance, with coverage until you obtain your residency card.

- (b) The other alternative that is being used in practice is to pay the person as if he/she were an independent professional, withholding the taxes that correspond to that category, with two exceptions:
 - (i) that as soon as he/she gets his/her residence card, he/she must be affiliated with the TSS as an employee; and
 - (ii) in his/her seniority as noted in the contract of employment, the time he/she was paid as an independent professional must be included.
 - (c) The first option is more orthodox, although the second option saves on insurance.
 - (d) On the other hand, if the foreign worker does not yet have a Dominican *cédula* (national identity card) but possesses one of these three documents: work visa; migration card; or regularisation card issued by the Ministry of Interior and Police – a request for assignment of Social Security Number (NSS) can be made through the Single System of Information and Collection (SUIR), following the instructions and steps indicated in the portal.
- If by chance the foreigner entered the country only with a tourist visa (without being in possession of the NM1 visa, which means that a job offer has already been made) it is convenient to agree with the foreign employee a break (at Easter, Christmas/end of the year, or another period of the year) to return to his/her country, and visit the Dominican Embassy, filling out the NM1 Visa Application Form, with the basic documentation (passport, birth certificate, certification of non-criminal record, SIRLA certification of the employer in the DR, and letter of offer of employment in the DR). And upon returning to the DR, you must complete all the paperwork at the General Directorate of Migration and Ministry of Labor, and in about four months, approximately, you will already have a residence or

work visa, and you will be able to contribute to the TSS and be paid as an employee at the DGII.

- It must be taken into account that, according to the case law, the illegal status of the foreign employee does not prevent him/her from having the same rights and exercising the same legal actions as a Dominican employee. Given these circumstances, it is advisable to sign a contract agreeing all of the above as “provisional conditions” until the work visa is obtained. This would allow to cover the employer in case of a claim by the foreigner himself/herself (which has already happened) who, despite being aware of having been hired without a work visa – and so accepted it – then alleges damages for not being affiliated to the Social Security. According to the case law, the lack of affiliation to the TSS when the conditions and mechanisms indispensable for such obligation are not present, exempts the employer from liability, since “no one is obliged to the impossible”.

5. New Work

5.1 Mobile Work

Following the COVID-19 pandemic, teleworking or remote working has proliferated in the country, and generally the parties freely agree on two or three days a week of remote working; other times, the parties agree on a longer period (three or four weeks) of remote working. In such cases, the employee could be working from home, from an airport, or from a hotel, interchangeably.

At the same time, the Ministry of Labor issued a resolution intended to regulate teleworking, but it has not been widely accepted, and no one is complying with it. It is too rigid: it is designed for teleworking only from the employee's home, and it has numerous requirements, such as a written agreement, registration with the Ministry of Labor, and many other impractical conditions. As a result, since it was created in November 2020, no one has complied with it. Companies and workers have continued to apply teleworking as described above, regardless of the resolution.

On the other hand, it is important to note that remote work agreements outside the scope of the Ministry of

Labor's resolution do not entail risks or fines, since prior to the pandemic, case law had already validated remote work in cases such as drivers, salespeople, and even employees working outside the employer's premises but at the employer's client's premises.

5.2 Sabbaticals

The law allows for the suspension of an employment contract without pay, so it is common to agree to suspend employment for a period so that the employee can pursue a master's degree abroad. However, the law does not specifically mention sabbatical leave.

5.3 Other New Manifestations

Following the COVID-19 pandemic, new forms of services have emerged outside the scope of labour legislation, such as delivery services, Uber, and complementary services in companies, for example, supermarket packers, who themselves prefer to operate outside the law because they earn more money than a permanent employee in the same company. The same is true for loaders and dispatchers of goods that arrive at the company or are taken to the company's customers. Another trend is that goods distribution services are being performed by individuals (and even companies) not subject to labour legislation.

6. Collective Relations

6.1 Unions

Trade unions are practically non-existent. Dominican workers are not interested in union membership. However, there are still some unions in the country, 95% of which were created in the last century and are made up of older workers.

6.2 Employee Representative Bodies

Local legislation does not provide for worker representation bodies, with the exception of the Joint Health and Safety Committee, composed of representatives of the company and the workers, which only operates in companies with 15 or more employees.

6.3 Collective Bargaining Agreements

Collective bargaining is practically non-existent in the country. Only a few large companies have collective agreements. Furthermore, with the exception of two

or three cases, all existing collective agreements date back to the last century.

7. Termination

7.1 Grounds for Termination

The law provides for the "*desahucio*" (or discretionary dismissal), which allows the employer to terminate the employee without having to give a reason, provided that advance notice is given and severance pay is paid.

On the other hand, there is disciplinary dismissal, which allows the employer to terminate the contract on the grounds of serious misconduct, in which case they must prove such misconduct, and if they fail to do so, they are obliged to pay severance pay and other compensations.

There is no prior procedure for *desahucio* or disciplinary dismissal.

7.2 Notice Periods

If the employment contract is for three months, the employer must give seven days' notice; if the contract is for six months, the notice period must be 14 days, and if the contract reaches one year, the notice period must be 28 days. And, if the employer does not wish to give the days' notice, they are obliged to pay the salary equivalent to those days.

In addition, the employer must pay severance pay as follows:

- if the contract is for three months, they must pay six days' salary;
- if it is for six months, they must pay 13 days' salary;
- if it is for one to four years, they must pay 21 days' salary for each year; and
- if the contract is for five or more years, they must pay 23 days for each year.

7.3 Dismissal for (Serious) Cause

Disciplinary dismissal is possible if the employee commits any of the 19 offences listed in Article 88 of the

Labor Code, the most common of which are as follows.

- Lack of probity and honesty:
 - (a) theft, fraud, and breach of trust (No 3);
 - (b) unjustified absences and abandonment of work (Nos 11 and 13); and
 - (c) violence or fighting (No 3).
- Dismissal must take place within 15 days of the misconduct being discovered. If this period expires, the right to dismiss expires.

Furthermore, dismissal must be communicated in writing to the employee, stating the reason for dismissal and indicating the relevant section of Article 88. It must then be communicated to the Ministry of Labor within 48 hours.

If the employer fails to notify the employee within 48 hours, or if, even within 48 hours, it does not indicate the cause, or if, having correctly notified the dismissal, it fails to prove the misconduct committed by the employee, it shall be obliged to pay severance pay, six months' salary, and legal costs.

7.4 Termination Agreements

Termination of the employment contract by mutual agreement is possible and must be done in writing and before a notary public. No other formality is required.

Normally, when the contract ends due to eviction, the employee usually signs a release from receiving severance pay. The employer does not have to sign anything except the check or bank transfer.

The discharge receipt does not have to be notarised.

7.5 Protected Categories of Employee

Desahucio (discretionary dismissal) is not permitted in the following cases.

- During the time for which the employee has been guaranteed that his or her services will be used.
- If a suspension of the contract is in force that has as its cause circumstances inherent to the worker's person. Even so, disciplinary dismissal is not prohibited; nor is *dimision* (constructive discharge or indirect dismissal).

- During the employee's vacation.
- During pregnancy and three months or 14 weeks after the date of delivery (birth of the child) of the worker.
- During the period of union protection (union privilege) in favour of union leaders.
- If the worker is affected by HIV and AIDS.

As for disciplinary dismissal, this is permitted against a woman under maternity protection if the employer obtains authorisation from the Ministry of Labor. It is also permitted against a union leader with authorisation from the labour court.

8. Disputes

8.1 Wrongful Dismissal

Disciplinary dismissal must be carried out in accordance with the following principles.

- Principle of causality – there must be a causal link between the employee's misconduct and the dismissal, ie, it must be proven that the employee committed the misconduct and not someone else.
- Principle of proportionality – there must be proportionality between misconduct and the penalty to be imposed. Dismissal, which is the most extreme penalty in an employment relationship, can only be justified in the event of serious misconduct, ie, a "serious culpable act committed by one of the parties, which entitles the other party to terminate the contract without liability."
- Principle of opportunity – also known as the principle of temporality of the offence, according to which dismissal must be exercised within a reasonable time, or in any case must be exercised within the period established by law: 15 days from the moment the employer becomes aware of the employee's offence.

The Supreme Court of Justice has ruled that "the serious nature that must accompany a work misconduct in order to be considered grounds for dismissal is not determined by the fact that such misconduct causes serious harm to the employer, but rather that it constitutes a violation of the employee's fundamental obligations or that, by its nature, it makes it impos-

sible to maintain the contractual relationship, that is, that it damages the existing relationship between the employee and the employer, even if it does not cause any particular harm to the latter.”

“Not every misconduct on the part of the employee is a legal cause for dismissal. The misconduct attributable to the employee and justifying dismissal must be serious and inexcusable.” The misconduct justifying dismissal must be serious. It is the express purpose of labour law to ensure, as far as possible, stability in the employment relationship; therefore, the facts that may justify the termination of that relationship must always be of a serious nature. That is, “that makes it impossible for the relationship” between the parties to continue, or “that makes it impossible for the employer and the worker to continue working together.”

If the employer fails to notify the dismissal to the employee within 48 hours, or if, even within 48 hours, it does not indicate the cause, or if, having correctly notified the dismissal, it fails to prove the misconduct committed by the employee, it shall be obliged to pay severance pay, six months’ salary, and legal costs.

8.2 Anti-Discrimination

Fundamental Principle VII of the Labor Code states: “Any discrimination, exclusion, or preference based on sex, age, race, colour, national origin, social origin, political opinion, union membership, or religious belief is prohibited, except as provided by law for the protection of the worker. Distinctions, exclusions, or preferences based on the qualifications required for a particular job are not covered by this prohibition.”

The burden of proof lies with the person making the claim.

8.3 Digitalisation

Both the law and case law have validated emails and WhatsApp messages as valid forms of evidence, as well as videos and recordings.

The employer is authorised to access corporate emails, which are considered work tools, but not the employee’s personal emails.

The employer is authorised to have video cameras in the workplace, except in private areas such as bathrooms.

The employer is authorised to install GPS systems in vehicles assigned to employees.

9. Dispute Resolution

9.1 Litigation

There are specialised labour courts. There are no class actions in the country.

In theory, employers and employees are entitled to appear in court and defend themselves. However, no one does so, and everyone seeks the assistance of a lawyer, given that the process is quite complex and any mistake or failure to meet a deadline could be fatal.

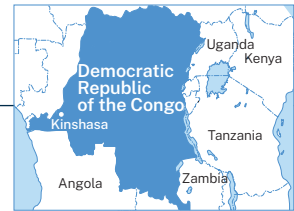
The Ministry of Labor offers free legal assistance, but very few people use it, as people prefer to hire their own lawyers.

9.2 Alternative Dispute Resolution

Arbitration is possible. However, it is only possible after the employment contract has ended. It cannot be agreed upon or provided for at the start of the contract.

9.3 Costs

Attorneys’ fees and legal costs are borne by the party that loses the case in court, whether it is the employer or the employee.



Law and Practice

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Liedekerke

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Liedekerke has a labour and employment department that is one of the largest employment teams within a full-service law firm in Belgium, and which is recognised as a leading practice. With a team of nine lawyers – including three partners – it advises and assists clients in all matters touching on labour and employment law. With offices in Brussels, London, Kinshasa and Kigali, the firm can offer seamless services wherever its clients choose to do business. Clients include Belgian, foreign and multinational corporations

that are active in numerous industry sectors, such as energy, IT, automotive, retail, hotel, food and logistics. The labour and employment department advises public administrations and has particular experience in (international) transfers of undertaking, collective dismissal and reorganisations, closures, trade union negotiations, compensation and benefits, discrimination law, social crimes and employment fraud, and more.

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1. Employment Terms

1.1 Employee Status

The status of white-collar or blue-collar workers, whilst often differentiated in other countries, does not exist as such under Congolese law. In fact, the Congolese Labour Code refers, from time to time, to white-collar or blue-collar workers but does not make any distinction in the applicable rules. This means that the same rules will apply to all workers of an undertaking, regardless of whether the activity they perform is more manual (“blue-collar”) or intellectual (“white-collar”).

Congolese law contemplates only one kind of employment status – that of “worker”. The terms “white-collar worker” and “blue-collar worker” have no legal definition.

Despite the fact that Congolese law does not distinguish between white-collar workers and blue-collar workers, it nevertheless makes a distinction between seven categories of workers:

- ordinary labourer;
- skilled worker;
- semi-qualified worker;
- qualified worker;
- highly qualified worker;
- foreman; and
- middle management.

These seven categories entail the application of some specific rules, mostly with regard to salary scales.

1.2 Employment Contracts

Types of Employment Contracts

Under Congolese law, a fixed-term employment contract is a contract entered into in the following cases: for a fixed period, for a specific job or to replace a worker who is temporarily unavailable. Where the contract does not fit into one of these categories, it qualifies as an open-ended employment contract.

Generally speaking, as regards working conditions, workers employed under a fixed-term contract may not be treated less favourably than comparable permanent workers solely on the ground that they are hired for a fixed period (or a specific task, or in order to replace a temporarily unavailable worker), unless difference in treatment is justified by objective reasons. Where justified, their rights may be determined in proportion to the duration of the contract.

Specific rules apply to fixed-term contracts (eg, succession of fixed-term contracts). Specific rules also apply to what is called “daily labour” under Congolese law; that is, contracts concluded on a day-by-day basis. Where such contracts are concluded for more than 22 days of work within a period of two months, the worker will be deemed to have been hired for an indefinite term.

Requirements

Congolese employment law is somewhat ambiguous as to whether there is a requirement to have contracts in writing. It seems that the legislature has left room for oral contracts since the current Labour Code (2002) mentions that a contract that is not in writing will be deemed to have been concluded for an indefinite

period of time. However, a Ministerial Decree that pre-dates the current Labour Code of 2002 and was confirmed by a Ministerial Decree of 2011 requires that employment contracts be in writing. In any case, it is strongly recommended that fixed-term employment contracts be in writing in order to avoid any reclassification as open-ended (indefinite) agreements.

When in writing, the employment contracts must include at least the following:

- the name of the employer;
- the employer's identification number at the National Social Security Institute (INSS), now the National Social Security Fund (CNSS);
- surname, given name, post-name(s) and gender of the worker;
- the worker's identification number at the CNSS and, where appropriate, the order number assigned by the employer;
- the date of birth of the worker or, failing that, the presumed year thereof;
- the worker's place of birth and nationality;
- the worker's family situation;
- surname, given name, or post-name(s) of the spouse;
- surname, given name and date of birth of each dependent child;
- the nature and modalities of the work to be performed;
- the amount of the agreed remuneration and other benefits;
- the work place;
- the duration of the commitment;
- the duration of the notice period (dismissal);
- the entry into service date;
- the place and date of conclusion of the contract; and
- the ability to work duly certified by a doctor.

The draft contract must be drawn up in French and submitted to the worker at least two working days before it is signed, together with all the essential documents to which the draft contract refers. Signed copies must be given to the employer, the worker and the authority empowered to endorse the contract.

The employer is required to submit the contract to the National Employment Office (*Office National de l'Emploi*) for approval within 15 days from the date of signature of the contract. Failure to do so entitles the worker to terminate the employment contract at any time, without having to comply with a notice period. The worker can also claim damages. In the event the National Employment Office refuses to approve the agreement, the latter ends automatically.

1.3 Working Hours

Legal Working Time Limits

Maximum legal working time may not in any case exceed 45 hours per week and eight hours per day. These hours do not include the time required for the worker to travel to or from the place of work, unless this time is inherent to the work.

Possibility of Flexible Arrangements

Flexible (mutual) arrangements regarding working time are admitted, provided, however, that any hour performed beyond the maximum working hours per day/week will fall under the rules regarding overtime.

Part-Time Contracts

The Congolese Labour Code does not specifically address part-time contracts but there is, in this firm's view, no legal restriction to the signing of a part-time contract. In this case, it is advisable to have a written contract. The general rules of the Congolese Labour Code will apply to part-time contracts.

Overtime

Hours worked in excess of the legal working hours will be considered overtime and the worker will then be entitled to overtime pay.

The overtime pay amounts to a percentage of the corresponding salary:

- 30% for each of the first six hours worked in excess of the statutory weekly working time or the period considered equivalent;
- 60% for each of the following hours; and
- 100% for each hour of overtime performed on the weekly day of rest.

1.4 Compensation

Minimum Wage Requirements

The government of the Democratic Republic of the Congo set, by Decree No 25/22 of 30 May 2025, the new Guaranteed Interprofessional Minimum Wage (SMIG) at CDF21,500 (USD7.45) per day for unskilled labourers.

A transitional phase provides for a rate of CDF14,500 (USD5) per day starting in May 2025, before full implementation in January 2026. This Decree repeals all provisions of the 2018 decree, which had set the SMIG at CDF7,075 (USD2.45) per day for the same category of workers.

This new SMIG came into effect immediately upon its signing on 30 May 2025.

The *tension salariale* (ratio) between the ordinary labourer wage and the middle management wage is 1:10.

Thirteenth Month and Variable Remuneration

The Congolese Labour Code does not include any provisions regarding the thirteenth month, nor any specific provision regarding bonuses. Collective bargaining agreements concluded at the company level or the sectoral level may include specific provisions regarding variable remuneration. In addition, the parties to an employment contract may always negotiate their working conditions and the employer may always grant a thirteenth month and/or bonuses, having in mind that workers belonging to the same category of employment should receive the same benefits in order to avoid discrimination issues.

Government Intervention in Salary Increase

Decree No 79-2002 of 3 July 2002 establishes the legal framework for the determination and adjustment of the SMIG, minimum family allowances, and housing cost equivalents.

This Decree outlines social and economic criteria for setting the minimum wage, such as cost of living, essential worker needs, inflation (consumer price index), and employer payment capacity. It also provides a mechanism for periodic adjustments of the SMIG, particularly when inflation exceeds 50%,

and mandates a tripartite commission (government, employers, and workers) to review and recommend updates annually, based on national price surveys and wage levels.

Thus, even though the Labour Code remains silent on salary increase, governmental intervention in this respect is structured by this Decree.

1.5 Other Employment Terms

Vacation

Under Congolese law, the employer has the obligation to grant vacation and vacation pay to the workers. The right to vacation pay arises at the end of each year of service counted from date to date. The worker cannot renounce their vacation rights.

The vacation period must be fixed by mutual agreement at a convenient moment for both parties and fall no later than six months after the right arose. The duration of the vacation period varies in accordance with the age of the workers. For workers aged 18 and over, the vacation period must at least be equal to one working day per full month of service. For workers below the age of 18, the period is at least equal to one and a half working days per full month of service. These durations are increased by one working day for every five years of occupation with the same or a substituted employer.

Vacation pay is equal to the corresponding remuneration, all benefits included, as on the day on which they leave for holiday.

Required Leaves

Maternity leave

Maternity leave under Congolese law consists of a suspension of the employment contract during 14 consecutive weeks, of which a maximum of eight weeks can be after the delivery and six before it. During this period, the mother is entitled to two thirds of her pay (benefits included). The employer may not terminate the employment contract during this period.

While a mother is breastfeeding her child, she is entitled to two half-hour rests a day to allow her to breastfeed. These rest periods shall be remunerated as working time.

Incapacity to work

Where the worker is unable to provide their services as a result of sickness or accident, they are entitled to two thirds of their remuneration (benefits included) and to the full family allowances, throughout the period of suspension of the contract, which must not exceed six consecutive months.

Occasional Leave

The Congolese Labour Code provides for the following occasional leave:

- worker's wedding – two working days;
- delivery of the wife – two working days;
- death of spouse or of a first-degree relative – four working days;
- child's wedding – one working day; and
- death of a relative – two working days.

These days are not deductible from the legal minimum vacation and cannot be split. The employer must only pay for occasional leave up to a maximum of 15 working days per year.

Confidentiality and Non-Disparagement

Except for the general prohibition of disclosure of trade or business secrets, nothing is provided in respect of limitations on confidentiality or non-disparagement agreements under the Congolese Labour Code. Employers are therefore free to include such clauses in the employment contracts or settlement agreements, although it is not very frequent in practice. There is, however, a confidentiality obligation for workers' representatives who gain knowledge of confidential information in the course of their duties.

Employees' Liability

The Congolese Labour Code specifies three situations in which a worker can be held liable, entitling the employer to claim compensation. The first situation relates to the damage caused to the employer's goods and the equipment made available to the worker (although the worker cannot be held responsible for normal wear and tear on the equipment). The employer may also claim financial compensation for damage resulting from a worker's disclosure of the company's trade or business secrets, or from an act of unfair competition. Finally, the worker can be held lia-

ble in the case of termination due to a serious breach by the worker: the employer may claim compensation from the worker for the damage directly caused by the worker's gross negligence.

Disciplinary sanctions can also be imposed on workers, depending on the seriousness of the fault committed whilst performing the contract:

- blame;
- reprimand;
- lay-off, with a maximum of two times 15 days a year, where such a measure is provided for either in the employment contract, a collective bargaining agreement or the company work rules;
- dismissal with notice; or
- dismissal for a serious cause.

2. Restrictive Covenants

2.1 Non-Competes

Congolese law prohibits non-compete clauses, except under the following strict cumulative conditions:

- the contract is terminated by the employer for serious cause attributed to the worker, or by the worker without serious cause attributable to the employer;
- the worker has such knowledge of their employer's clientele or business secrets that they could cause serious harm to their former employer;
- the prohibition must relate to the type of activities carried out by the worker at the employer's premises; and
- the duration of the clause may not exceed one year.

The non-compete clause may provide for a contractual penalty to be imposed on the worker who violates the clause.

The Congolese Labour Code does not provide for a maximum amount. It merely states that, at the request of the worker, the competent court may reduce the penalty to a reasonable amount, should it be considered excessive.

It is a common practice to include a non-compete clause in employment contracts of workers who could effectively compete with their former employers after the end of their employment contract. Generally, the provision of a penalty amount that does not exceed the equivalent of 50% of the remuneration corresponding to the non-compete period is recommended.

2.2 Non-Solicits

Nothing is set out in the Congolese Labour Code regarding non-solicitation clauses. It is, however, advisable to include such a clause, usually applicable for a standard period of 12 months following the termination of the employment contract.

The present authors' firm has never come across such a clause, save under the more standard form of a non-compete clause.

3. Data Privacy

3.1 Data Privacy Law and Employment

Generally speaking, privacy is mentioned in the Congolese Constitution. Although not expressly stated, it may reasonably be assumed that this provision could be interpreted as applicable within the work sphere.

In addition, there are a few scattered provisions relating to privacy, such as the Ministerial Order of 8 October 2015, which states: "The processing of personal data concerning jobseekers must be kept secret and respectful of privacy. Processing of personal data concerning jobseekers means the collection, storage, combination and communication of all information about them."

Since the adoption of an Ordinance-Law of 13 March 2023 establishing the Digital Code, a more structured legal framework has been put in place. This ordinance-law identifies, among other things, professional data (such as status, position held, employer, and remuneration) as personal data. Furthermore, it prohibits the processing of sensitive data, including those related to ethnic origin, political opinions, religious beliefs, sexual orientation, or health status. However, this prohibition does not apply when the processing is necessary for the fulfilment of the employer's specific rights and

obligations under labour law, thereby allowing certain justified exceptions in the professional context.

In addition to these legal instruments, the international standards – such as the *Organisation pour l'harmonisation en Afrique du droit des affaires* (the Organisation for the Harmonisation of Corporate Law in Africa, or OHADA) rules and those of the International Labour Organization – will apply.

4. Foreign Workers

4.1 Limitations on Foreign Workers

Generally speaking, the Congolese Labour Code sets out that it is prohibited for a foreign or a Congolese company to have more than 15% of its total workforce be foreign workers. Ministerial Decree No. 33/CAB.MIN.ET/EAN/JDO/8/2025 of 5 August 2025, which amends and supplements Ministerial Decree No. 121/CAB.MIN.TPS/112/2005 of 26 October 2005, sets out the quotas for the employment of foreign workers. These quotas vary by sector and by employment category. They generally range between 2% and 6.5% of the total number of workers in each considered personnel category (general classification of jobs, foremen and managers) within the undertaking.

The mining sector is a more regulated sector in this respect, with minimum quota of Congolese employees being higher than in other sectors (up to 100% depending on the phases of the mining project and on the employees' level of qualification).

4.2 Registration Requirements for Foreign Workers

Foreigners willing to work in the DRC must be in the possession of a work permit, which will be delivered by the National Commission for the Employment of Foreigners.

5. New Work

5.1 Mobile Work

There are no regulations in the DRC on mobile working, known as teleworking. Companies are therefore free to grant and organise telework as they deem appro-

priate. In practice, companies will include provisions regarding telework in their work rules and/or in the employment contracts. It may also be orally agreed upon between the employer and the employee.

5.2 Sabbaticals

There are no regulations on sabbatical leave in the DRC. Sabbaticals are also very rare in practice.

5.3 Other New Manifestations

There are no specific regulations with respect to new manifestations in the field of “new work” in the DRC.

6. Collective Relations

6.1 Unions

Role of Unions

Workers and employers have the right to form unions whose sole purpose is the analysis, defence and development of their professional interests and the social, economic and moral progress of their members. The representation of workers in undertakings is ensured by an elected trade union delegation.

Every worker or employer, without distinction of any kind, has the right to join or to leave a professional organisation of their choice. Workers enjoy an appropriate protection against all acts of discrimination tending to prejudice their freedom of association. In this respect, it is prohibited for any employer to subject an employment relationship to any limit based on an affiliation or non-affiliation to any professional organisation and to dismiss a worker or otherwise cause them harm because of their affiliation to a professional organisation and/or participation in trade union activities.

Status of Unions

As to formalities, trade unions must register with the Ministry of Labour and Social Security, and draft articles of association. The Congolese Labour Code states a specific procedure to be followed to set up trade unions.

Trade unions are considered legal entities. Registered trade unions may form a union, confederation or federation.

6.2 Employee Representative Bodies

Competencies of the Employees' Representative Bodies

Generally speaking, the scope of competence of the delegation extends to all working conditions in the undertaking. More specifically, the union delegation:

- is consulted in respect of the work schedules, the general criteria for hiring, dismissing or transferring workers, the remuneration and the in-house work rules;
- is informed by the employer at least every six months about the undertaking's economic and social situation;
- participates in the solving of disciplinary issues within the undertaking;
- is allowed to propose any measure it considers necessary in the event of failure that could seriously disturb the functioning of the undertaking; and
- is allowed to propose/take measures to ensure technical safety and hygiene in the workplace, and to safeguard the health of all persons in the undertaking or establishment.

In addition, each delegate is individually competent to:

- submit to the employer any individual complaint that has not been directly addressed concerning working conditions and the protection of workers, the application of collective agreements and professional classification;
- ensure the application of the requirements relating to the health and safety of workers, and propose all appropriate measures in this regard;
- be consulted in respect of discipline at work; and
- transfer to the Labour Inspectorate any complaint or claim concerning the legal or regulatory requirements for which the Inspectorate is in charge and that the union delegation has been unable to sort out.

As to their role, the members of the trade union delegation are supervised, trained and monitored in their trade union activities within the undertaking by their respective professional organisations.

Institution of the Employees' Representative Bodies

The Congolese Labour Code provides that the representation of workers in undertakings or establishments of any kind is ensured by an elected delegation. The mandate of the delegates is for three years and is renewable. The latest elections took place in 2023.

As to their institution, the minimum number of delegates is fixed as follows:

- from ten to fewer than 20 workers – one delegate;
- from 20 to fewer than 100 workers – three delegates;
- from 100 to fewer than 500 workers – five delegates;
- from 500 to fewer than 1,000 workers – nine delegates; and
- more than 1,000 workers – nine delegates plus a further delegate per 1,000 additional workers.

In undertakings in which there are fewer than ten workers, one of the workers may be appointed to represent the other workers.

Election of delegates

The members are elected. Any worker – without distinction as to gender, marital status, nationality or age – may be elected provided that the worker meets the eligibility criteria (inter alia, being at the service of the employer for at least six months). Delegates are elected by the personnel of the employer (there are also some particular conditions).

Elections are organised by the employer, which will first consult the trade union(s) represented in the establishment and the outgoing delegation, if any, on the elections and will take due account of any observations made by them. The election date must be announced at least three weeks in advance and 15 days before the date of the poll; the employer must draw up and post a list of the workers who do not meet the voting conditions. Should the employer fail with respect to a procedural aspect, it is the Labour Inspectorate that will set the date and, if necessary, organise the elections.

The lists of candidates must be filed not later than six working days before the date fixed for the poll.

The poll

The poll will be composed of one or two rounds as the case may be: for the first round, only the trade union or unions legally registered and whose field of activity extends to the undertaking may present candidates. Each list must indicate the name of the organisation filing the list and bear the signatures of its qualified representatives. The poll is closed if the number of valid votes cast is greater than half of the number of registered voters. If not, the election is deemed null and void, and a second ballot is to be held.

The second ballot

For the second ballot, voters may, in conjunction with the trade union, propose new candidates. To be valid, a list filed by electors must bear the names and signatures of a number of electors at least equal to three times the number of delegates to be elected by the electoral college. The election process is closed after the second ballot, irrespective of the number of votes cast.

6.3 Collective Bargaining Agreements

General Principles

The collective bargaining agreement is a written agreement on the conditions and the employment relationship between one or more employers or one or more employers' organisations and one or more workers' organisations. It can be concluded either at a sector or at a company's level. This agreement establishes the individual and collective relations between employers and workers within undertakings and settles the rights and duties of the contracting parties. In any company to which the collective bargaining agreement applies, the latter must be posted in the premises, in a place highly visible and easily accessible to workers.

Collective bargaining agreements may mention provisions more favourable to workers than those of the applicable law but may not derogate from the mandatory legal provisions. The provisions of a collective agreement prevail over provisions set in individual employment contracts and the in-house work rules. To be valid, a collective bargaining agreement must include some mandatory provisions set out in the

Congolese Labour Code, such as its date, object and the names and capacities of the contracting parties.

It is drafted in as many originals as there are parties and must be signed by all the contracting parties. Six additional originals are subject to the visa of the Labour Inspectorate. One copy of the agreement is then filed at the clerk's office of the labour court and one copy will be sent to the Ministry of Labour and Social Security for publication in the official gazette (*journal officiel*). Where a collective agreement has been published in the official gazette, the Minister of Labour and Social Security, on the Minister's own initiative or at the request of a trade union, may extend all or some of its provisions to all employers and workers pertaining to the same professional and territorial sector.

The provisions of a collective agreement apply to all workers of the categories concerned employed in the undertaking(s) covered by the agreement, unless otherwise provided for in the collective bargaining agreement.

Remedies in Case of Breach

Breach of the agreed obligations stated in a collective bargaining agreement entitles the parties to an action for damages, the terms and limits of which may be stipulated in the collective bargaining agreement.

7. Termination

7.1 Grounds for Termination

Under the Congolese Labour Code, an open-ended employment contract may only be terminated by the employer for a valid reason related to the employee's conduct or ability (physical or professional), or for reasons linked to the operational needs of the enterprise, establishment, or service.

Valid grounds for dismissal include:

- acts committed by the employee on the employer's premises in the course of performing their duties;
- acts committed outside the workplace but directly connected to the performance of their professional duties; and

- organisational or economic needs of the employer.

However, the Congolese Labour Code clearly states that certain grounds may not justify termination (see **8.1 Wrongful Dismissal**).

As for fixed-term contracts, they automatically expire on the agreed termination date. Any clause allowing early termination by notice is null and void.

Finally, an employment contract may also be terminated by mutual agreement of the parties, without prejudice to other provisions of the Congolese Labour Code.

Termination Formalities

Any termination must be notified in writing by the party who takes the initiative to the other party. Where termination is at the employer's initiative, the letter of notification must expressly state the reason for dismissal. There is no motivation regime a posteriori.

Termination of an open-ended employment contract without a valid reason entitles the worker to reinstatement. Failing this, the worker will be entitled to damages fixed by a labour court (with a maximum amount equivalent to 36 months of the worker's net salary).

Any dismissal based on the operational needs of the company, establishment or service is subject to a specific procedure (complying with a hierarchy of dismissals, informing workers' representatives, verifying compliance with the procedure by the Labour Inspectorate, etc).

Where the employer is considering dismissing on grounds related to the worker's ability or conduct, the employer must, before any decision is taken, allow the person concerned to present a defence.

Collective Redundancies

A Departmental Order sets out a specific procedure to be followed in the case of collective redundancies (called "massive" redundancies in Congolese law).

A lay-off is to be considered collective if, within a period of one month, it leads to the departure of at least:

- three workers for an enterprise that employs no more than ten workers, four workers for an enterprise that employs at most 20 workers;
- ten workers for an enterprise that employs between 21 and 100 workers;
- 30 workers for an enterprise that employs between 101 and 500 workers;
- 50 workers for an enterprise that employs between 501 and 1,000 workers;
- 100 workers for an enterprise that employs between 1,001 and 2,000 workers;
- 200 workers for an enterprise that employs between 2,001 and 4,000 workers;
- 250 workers for an enterprise that employs between 4,001 and 6,000 workers; and
- 300 workers for an enterprise that employs more than 6,000 workers.

To be valid, a collective dismissal needs to be justified either by economic reasons or by the operational needs of the enterprise.

A specific procedure must be followed:

- seeking prior authorisation for the dismissal from the Minister of Labour and Social Welfare;
- consulting the union delegation; and
- following a hierarchy of dismissals where the redundancies are based on economic grounds.

Specific obligations could also be imposed by a collective bargaining agreement concluded at a sectoral and/or the company level.

7.2 Notice Periods

General Rules Regarding Notice Periods

Notice cannot be given during the periods of suspension of the employment contract, except in the following cases:

- sickness or accident, except in the case of an accident at work or occupational disease – the employer may terminate the employment contract after six uninterrupted months of inability, in which case, the employer must pay a termination indemnity corresponding to the notice period due for the termination of open-ended employment contracts;

- exercise of public office or civic obligations – the employer may terminate the employment contract after 12 months' suspension and pay the severance indemnity provided for in the employment contract or in the collective bargaining agreement;
- force majeure – either party may terminate the employment contract after a two-month suspension without compensation; and
- worker's imprisonment – the employer may terminate the employment contract without compensation after three months' suspension or if the worker is subsequently sentenced to a penalty of penal servitude of more than two months.

The termination of the employment contract must be notified in writing by the party taking the initiative to the other party. Where the termination takes place at the initiative of the employer, the letter of notification must expressly state the ground for the termination.

Duration of the Notice Period

The termination of the contract must be notified in writing by the party who takes the initiative to the other party.

Unless the parties or the collective agreement stipulate a longer period, the notice period is equal to 14 working days as from the day after the notification, where the notice is given by the employer to a personnel member of the general classification of jobs. This period is increased by seven working days per full year of continuous service, counted from date to date. For foremen, the notice period is equal to one month, increased by nine working days per full year of continuous service, counted from date to date. For managers, the notice period is equal to three months, increased by 16 working days per full year of continuous service, counted from date to date.

The notice period to be given by the worker is equal to half the notice period that the employer should have given if the employer had taken the initiative of termination. It may in no case exceed this limit.

Collective bargaining agreements concluded at sectoral and/or the company level may provide for different notice periods that are more favourable to the workers.

Parties' Obligations During the Notice Period

During the notice period, the employer and the worker remain bound by all their contractual obligations. During the same period, the worker is entitled to one paid day off per week in order to find a new position.

Indemnity in Lieu of Notice

Termination of an open-ended contract without notice or without full observance of the notice period will entail the payment of an indemnity in lieu of notice, corresponding to the remuneration and benefits in kind that the worker would have received during the (part of the) notice period that was not granted.

Specific Procedure in Dismissals for Economic Grounds or for a Reason Linked to the Conduct or Ability of the Worker

There is a specific procedure to follow in the case of a dismissal based on economic grounds. The employer must inform the workers' representatives and the Labour Inspectorate, which will verify the grounds for dismissal and compliance with the mandatory procedure. Such a dismissal must be authorised by the Minister of Labour.

For a dismissal based on the conduct or on the ability of the worker, it is imperative that the latter must be allowed to defend themselves against the reproaches made before any decision is taken.

Specific Procedure in Dismissals of a Workers' Representative

The dismissal of a workers' representative must be pre-approved by the Labour Inspectorate (see 7.5 Protected Categories of Employee).

7.3 Dismissal for (Serious) Cause General Principles

A party is deemed to have committed serious misconduct when the rules of good faith do not allow it to require the other party to continue to perform the contract.

The employer commits serious misconduct when they seriously breach the obligations of the contract, in particular in the following cases:

- they are guilty of an act of dishonesty, sexual or moral harassment, intimidation, assault, serious insult or tolerate similar acts by other workers;
- they intentionally cause the worker material damage during or in connection with the performance of the contract;
- the safety or health of the worker is exposed to serious dangers or when the employers' morality is at risk;
- they unduly apply reductions or withholdings to the worker's remuneration; or
- they persist in not applying the legal or regulatory provisions in force.

The worker commits serious misconduct when they seriously breach the obligations of the contract, and in particular when they:

- are guilty of an act of improbity, sexual or mental harassment, intimidation, assault or serious verbal abuse of the employer or their workers;
- intentionally cause the employer material damage during or in connection with the performance of the contract;
- are guilty of immoral acts during the performance of the contract; and
- jeopardise the safety of the company, the work or personnel through recklessness.

The party to the contract deciding to put an end to the employment contract for serious cause committed by the other party must notify the other party in writing of their decision within 15 working days after having gained knowledge of the facts it invokes.

For the purpose of investigation, the employer may, within two working days after having gained knowledge of the facts, notify the worker of the suspension (for a maximum of 15 days) of their duties. The notification in writing may be sent either by registered letter through the post office or delivered to the person concerned with acknowledgement of receipt, or, in the event of refusal, in the presence of two witnesses.

Consequences

The employment contract will be immediately terminated, without notice. The party terminating the employment contract for serious cause committed by

the other party may seek further compensation (damages) before courts.

7.4 Termination Agreements

Any employment contract may be terminated by a mutual consent agreement. There are no specific requirements involved. There are no statutory requirements for enforceable releases or other limitations on termination agreement terms.

7.5 Protected Categories of Employee

While there is no specific compensation regime (such as automatic lump-sum damages) for workers dismissed on protected grounds, the Congolese Labour Code does provide certain protections for specific categories of employees, particularly in relation to dismissal.

For example, women are protected against dismissal during maternity leave, and certain grounds are considered invalid for dismissal (see 7.1 Grounds for Termination), such as union membership or activities, political or religious beliefs, or HIV status.

In addition, employee representatives (both elected and substitute delegates) benefit from enhanced protection. Any dismissal or transfer that would result in the loss of representative status is subject to prior approval by the local labour inspector. If the employer alleges serious misconduct, they may suspend the delegate's duties, but the dismissal only becomes effective after the labour inspector has issued a decision.

The employer must notify the labour inspector in writing (by hand-delivered letter or registered mail with acknowledgment of receipt). The inspector has one month from receipt to issue a decision; if no decision is issued within that timeframe, approval is presumed. The inspector's decision is subject to judicial review under conditions set by ministerial order.

Except in cases of serious misconduct, the notice period for terminating a worker representative is twice the standard period, and not less than three months.

Further, candidates for worker representation may not be dismissed from the time of submitting electoral lists

until the proclamation of election results. Unsuccessful or non-re-elected candidates continue to benefit from enhanced notice protections for a period of six months following the election.

Employees who are dismissed for unlawful reasons or in breach of these protections may claim damages for abusive dismissal, up to a maximum of 36 months' net salary.

8. Disputes

8.1 Wrongful Dismissal

Grounds for a Wrongful Dismissal Claim

The Congolese Labour Code flags some invalid dismissal grounds:

- affiliation or non-affiliation to a union, or participation in union activities outside the working hours, or, with the employer's consent, during the working hours;
- soliciting, exercising or having exercised a worker representation mandate;
- filing a complaint or participating in proceedings against an employer for alleged violation of the law, or bringing an action before the competent administrative authorities;
- race, colour, gender, marital status, family responsibilities, pregnancy, childbirth, religion, political opinion, national or social origin, ethnic group, HIV status; and
- absence from work during maternity leave.

In the event that a dismissal is based on one of these grounds, it will be deemed abusive. The list is non exhaustive, meaning that an employer must be careful when dismissing an employee and make sure that it has a valid ground for dismissal.

Consequences of a Wrongful Dismissal

In the event that an open-ended contract is terminated without valid cause, the employee is entitled to reinstatement. Failing this, the employee may claim damages, the amount of which is determined by the labour court. The court will consider factors such as the nature of the employee's duties, seniority, age, and any acquired rights. However, such compensa-

tion may not exceed 36 months of the employee's last net salary. In practice, labour courts often grant the maximum compensation when the dismissal is deemed abusive.

If a fixed-term contract is unlawfully terminated by the employer, the employee is entitled to damages equal to the full salary and benefits they would have received until the original end date of the contract.

8.2 Anti-Discrimination

The Congolese Labour Code states two particular discrimination issues: pregnancy and affiliation to a union delegation. As to pregnancy, it cannot be a source of discrimination in employment. In particular, it is prohibited to require a woman who applies for employment to submit to a pregnancy test or to present a certificate attesting the state of pregnancy, except for work that is totally or partially forbidden to pregnant or breastfeeding women, or that involves a recognised or significant risk to the health of the woman and the child.

As to the workers' representatives, they enjoy an appropriate protection against all acts of discrimination that aim to impair their freedom of association. In this respect, it is prohibited for any employer to subject an employment relationship to a (non-)affiliation to any professional organisation and to dismiss a worker or otherwise cause that worker any harm because of their affiliation to a professional organisation and/or participation in trade union activities.

Nothing is mentioned in the Congolese Labour Code regarding the burden of proof. It may reasonably be assumed that, without any specific rule thereof, it is the worker who invokes discrimination who must prove that they are effectively a victim of discrimination.

The worker could claim compensation before courts.

8.3 Digitalisation

There are no regulations in the DRC on the digitalisation of employment disputes. There is no possibility of recording or conducting court proceedings via video.

9. Dispute Resolution

9.1 Litigation

There are no specialised employment forms and class actions are not available as such. In the DRC, individual disputes are not admissible before the labour court unless they have first been submitted to the conciliation procedure, at the initiative of one of the parties, before the local Labour Inspectorate. Parties can always be assisted by a lawyer.

9.2 Alternative Dispute Resolution

Under the OHADA Treaty and OHADA Uniform Act on Arbitration (Article 2, indent 1), "Any natural or legal person may resort to arbitration with respect to any rights that may be freely disposed of."

It has been judged by the Appeal Court of Abidjan, Ivory Coast, that conflicts relating to the performance or termination of the employment contract may be subject to arbitration in the OHADA countries (Appeal Court of Abidjan, order number 1435, 27 March 2003 (short proceedings)). However, this decision has been criticised because "arbitration is not compatible with the mandatory rules of employment law".

The OHADA Common Court of Justice (CCJ) found in a judgment of 28 April 2016 that the CCJ has no jurisdiction on disputes in relation to labour law. Hence, the matter is debatable. One can, however, reasonably consider that a worker is free to resort to arbitration, once the dispute has arisen (but not before).

It is worth noting that a uniform act on employment law is expected but still under discussion (which first started in 2006). This uniform act will probably address this topic.

9.3 Costs

A prevailing employee cannot be awarded attorney's fees.

FRANCE



Law and Practice

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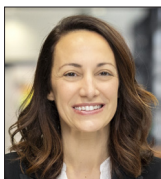
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Bredin Prat was founded in 1966 and has offices in Paris and Brussels. The firm now has more than 200 lawyers committed to the highest standards of excellence advising French and international clients on complex or sensitive transactions or contentious matters. Bredin Prat's practice areas include corporate law (M&A, private equity, capital markets,

governance), litigation and white-collar crime, competition and EU law, arbitration, tax, employment, financing, restructuring and insolvency, public law, tech law, and financial services and insurance regulatory. Cross-border matters represent more than two-thirds of the firm's work.

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B R E D I N P R A T

1. Employment Terms

1.1 Employee Status

Employees in France are typically divided into three categories:

- blue-collar workers, who are sometimes subdivided into workers (*ouvriers/employés*) and technicians/supervisors (*techniciens* and *agents de maîtrise*);
- executives/managers (*cadres*, who can be assimilated to white-collar workers); and
- senior executives (*cadres dirigeants*).

National collective bargaining agreements, which are negotiated at the industry level and are in principle applicable to all companies in that industry, typically provide for minimum wages for each employee category.

Provided that they perform their work with a certain degree of autonomy and/or responsibility, executives and (subject to specific conditions) technicians/supervisors can be subject to a specific working time arrangement calculated in days worked per year (instead of hours worked per week), called *forfait-jours*. This enables the company to pay a lump-sum salary to the employee regardless of their actual working hours (see 1.3 Working Hours).

Senior executives (ie, employees with the highest level of responsibility and remuneration within a company) are not subject to working time regulations.

1.2 Employment Contracts

In principle, an employment contract is deemed to exist when a person undertakes to work for and under the direction of another in return for remuneration, even in the absence of a written contract. This definition is articulated around three principles:

- the performance of work, which can involve a wide variety of tasks (manual, intellectual or artistic), in all professional sectors;
- the payment of remuneration in return for the work performed, whether paid in money or in kind, and whether calculated on a time or commission basis; and

- the legal subordination – ie, the authority of the employer who has the power to give orders and instructions, to monitor their execution, and to sanction the employee's failings.

Indefinite-Term Employment Contracts

Indefinite-term employment contracts are the standard form of employment. They do not have to be in written form from a strict legal point of view, but the majority of companies in France execute written contracts.

Any unwritten employment contract is deemed to be an indefinite-term, full-time contract.

Definite-Term Employment Contracts

Definite-term contracts can also be used. Unlike indefinite-term contracts, they must meet the following requirements in particular:

- be executed in writing within two days of the start of the employee's employment;
- be entered into to carry out a specific, temporary task, and only in a limited number of cases provided by the law, such as a temporary increase in activity, the replacement of a temporarily absent employee, or seasonal work;
- have a definite date of termination, which can be a precise date or a specific event, such as the temporarily absent employee's return date;
- not exceed the maximum length authorised by law (eg, 18 months in the case of a temporary increase of activity, renewable twice as long as the total duration does not exceed 18 months); and
- have neither the purpose nor the effect of permanently filling a job linked to the normal and permanent activity of the company.

Definite-term contracts that do not follow these legal requirements can be requalified into indefinite-term contracts.

Part-Time Employment Contracts

Part-time employment contracts can also be concluded for employees working less than the standard working hours – typically 35 hours a week or 218 days a year (see 1.3 Working Hours). Among other requirements, these part-time contracts should be in written

form and specify the number of hours worked (or days worked per year).

1.3 Working Hours

Standard Working Time

The standard working time arrangement in France is 35 hours a week.

Overtime

Any hour worked beyond this threshold is considered overtime, and is usually compensated with a salary increase of 25% (for the first eight overtime hours) or 50% (beyond the eighth hour), unless an applicable collective bargaining agreement provides for lower compensation, with a minimum of 10%.

Unless provided otherwise by applicable collective bargaining agreements, an employee cannot do more than 220 overtime hours within the same year. Beyond this limit, any overtime hours must be compensated (in addition to salary) by additional days of paid leave. Since January 2019, overtime is exempted from income tax up to EUR7,500 per year, and subject to a reduced rate of social contributions (ie, an exemption from pension contributions within the limit of 11.31% of salary).

Day-Year Scheme (Forfait-Jours)

Employees performing their work with a certain degree of autonomy and responsibilities can be subject to a day-year scheme called *forfait-jours*, under which they must work for a certain number of days per year (no more than 218 days). They receive lump-sum remuneration that covers all their hours of work, without any distinction between ordinary and overtime hours.

This particular scheme is very popular, especially for executives who are thus not subject to the 35-hour week. However, to be valid, this scheme must be provided for in a collective bargaining agreement (whether industry-level or company-level). This agreement should include guarantees ensuring that the employee's working hours and workload remain reasonable, and should provide safeguards in respect of the protection of employee health and safety.

In the absence of such provisions, or if the employer does not comply with them, the day-year scheme

could be deemed invalid, and the rules related to overtime would then apply. This gives rise to significant litigation in France, with a three-year limitation period for claims related to compensation. As a consequence, employers are strongly advised to design their day-year schemes carefully.

Part-Time Contracts

Unless otherwise agreed, part-time employees may not work less than 24 hours or more than 35 hours a week (or a pro-rated number of days for *forfait-jours*). A part-time employee may divide their working hours over a week, a month or even a year, as provided in their employment contract.

French Language

Employment contracts, as well as any amendments or schedules to the contracts, must be written in French to be enforceable against the employees. Bilingual contracts are also permissible, providing that the French version prevails.

1.4 Compensation

In France, employees are usually remunerated in cash on a monthly basis, according to the number of hours or days worked.

Minimum Wage

A statutory minimum wage called the SMIC is fixed every year by the French State by reference to the rate of inflation for the past year, based on the retail price index (including tobacco). If inflation exceeds 2% during the year, the SMIC is automatically increased. In principle, no employee working full-time can be remunerated under the SMIC regime.

As of November 2024, this minimum wage was set at EUR1,801.80 (gross) per month and EUR11.88 (gross) per hour.

In addition, industry-wide national collective bargaining agreements can provide a minimum wage that depends on the employees' status and classification, provided that it is higher than the SMIC.

Additional Compensation

Collective bargaining agreements also commonly provide for supplementary compensation (eg, an indi-

vidual/company-based performance bonus, a 13th month, seniority or holiday bonus, pension plans, and health and welfare plans). This additional compensation is distinct from the minimum wage, and may be payable to all employees or specifically reserved to certain employee categories (eg, executives or non-executives).

Some employees (usually managers) may receive additional compensation in the form of grants under long-term incentive plans (eg, bonus based on group's performance, phantom shares or restricted/free stocks), subject to their continued employment during the performance period.

Profit-Sharing

In companies that have been employing more than 50 people over the past five years, the implementation of profit-sharing mechanisms to the benefit of employees is mandatory. The amount due to employees is calculated using a legal formula that takes into account the company's net income, added value, wage bill and common equity. Profit-sharing bonuses benefit from favourable tax and social contribution regimes.

The company can also choose to set up profit-sharing schemes at its own discretion. These so-called "voluntary" schemes are subject to the same favourable tax and social contribution regimes as mandatory profit-sharing schemes, and have been increasingly promoted by the government in the past few years.

In addition, the Profit-Sharing Act, applicable as of 1 December 2023, has extended mandatory profit-sharing to companies with fewer than 50 employees and set up new profit-sharing schemes and bonuses, which can also benefit from favourable tax and social contribution regimes under certain conditions.

Annual Negotiation on Compensation

In principle, companies with more than 50 employees and with a trade union delegate are required to negotiate every year with the trade union delegates on the employees' remuneration and the potential increase thereof. Whilst negotiating is mandatory, there is no obligation to reach an agreement.

According to the Bank of France, in early 2025, negotiations between companies and trade unions resulted in average salary increases of approximately 2.1%. This figure is significantly lower than the average increases recorded in 2024 (3.3%) and 2023 (4.2%).

1.5 Other Employment Terms

Paid Holiday Leave

Under French law, employees have at least five weeks of paid holiday leave per year. In principle, rights to paid holiday leave only accrue during periods in which employees work, or during any period treated as working time (eg, maternity leave or sick leave caused by occupational injury or illness lasting less than one year). Pursuant to a new law dated 22 April 2024, which has brought French law into line with EU regulations, any period of sick leave is now treated as working time (regardless of its cause), with retroactive effect to 1 December 2009. These new provisions, which impose a significant financial burden on companies, have already had practical effects. Notably, there has been an increase in paid leave claims in employment disputes, as well as requests from statutory auditors to set aside provisions for the associated liabilities.

Employees can also be entitled to additional days off (RTT), which are granted when employees work more than the 35-hour working week or are subject to the specific *forfait-jours* working time ("day-year scheme"), based on a certain number of days worked per year.

Public holidays are in addition to an employee's annual leave entitlement.

Employees can also be entitled to special paid leave for specific events, such as marriage, death of a relative, sickness of a child, etc. Collective bargaining agreements can provide for additional days of paid leave.

Leave of Absence

In addition to holiday leave, employees may benefit from other kinds of paid leave, such as leave for personal reasons, sick leave, family leave, pregnancy leave, and maternity or paternity leave.

In such cases, the employment contract is suspended and the payment of the employee's compensation is covered, usually partly, by public social security funds. Under certain circumstances, collective bargaining agreements can also require companies to supplement this social security indemnity so that the employees receive their full salary.

Obligation of Loyalty and Discretion

Employees are subject to a general obligation of loyalty and discretion towards their employer. As a consequence, they are prohibited from disclosing, whether within or outside the company, confidential information or knowledge obtained in the performance of their duties. They are also prohibited from disclosing manufacturing secrets.

Employee Liability

In principle, employees cannot be held civilly liable for damage caused to their employer in the performance of their work. As a consequence, liability clauses in employment contracts cannot be enforced. By way of exception, an employee may be held civilly liable for gross negligence (*faute lourde*) if they commit serious misconduct with the intention to cause the company harm.

With respect to harm caused to third parties, employees can only be held personally liable for their actions if they acted outside the scope of their professional duties, without authorisation from their employer, and for purposes unrelated to their duties.

2. Restrictive Covenants

2.1 Non-Competes

The general obligation of loyalty and discretion applicable to employees in the performance of their duties typically covers confidentiality, professional secrecy and non-disclosure of trade secrets, but also a non-compete undertaking during the execution of the employment contract.

To protect their interests after the termination of an employment contract, companies can provide a specific non-compete clause. These clauses are typically applied to the most senior managers or to employees

with specific competitive skills, and usually provide that the employee agrees not to carry out, on their own behalf or on behalf of another employer, an activity similar to that of their employer's business during a certain period of time following the termination of the employment relationship.

To be valid, a non-compete covenant must follow four rules:

- it must be necessary to protect the legitimate interests of the company;
- it must be limited in time (a certain number of months or years, it being noted that more than 12–18 months is unusual, unless there are specific reasons justifying a longer restriction) and space (eg, a region, a country, a continent);
- it must include financial compensation for the employee during the period of the obligation; and
- it must be limited in terms of the prohibited activities (ie, it must be justified by the nature of the employee's duties and must not prevent the employee from finding work corresponding to their qualifications).

Any non-compete clause that does not comply with each of these requirements is null and void, and will not be binding on the employee.

The company can release the employee from their non-compete obligation upon termination of their employment contract (and in any case before the end of the applicable notice period), if it is expressly provided for in the employment contract or in an applicable collective bargaining agreement, or if it is expressly agreed by the employee.

As per case law, an employee who violates their non-compete obligation, even on a temporary basis, may have to refund the non-compete compensation to their former employer and may be held liable for damages.

2.2 Non-Solicits

Non-solicit clauses that apply to employees after the termination of their contract (eg, to prohibit them from reaching out to the company's employees, clients or customers) are typically included within non-compete clauses, to which they are often assimilated. As such,

they must follow the same rules to be valid, relating in particular to the financial compensation and the limitation in terms of time and space.

In addition, case law limits the scope of clauses prohibiting former employees from soliciting current employees of the company: these non-solicits may only cover “active solicitation” by the former employee. In other words, notwithstanding the non-solicit, employees of the company are still free to apply for a job with the former employee and be hired by them, providing that there was no prior “active solicitation” by the former employee. In addition, these non-solicits should in principle cover only the people employed by the company at the date of termination of the employment contract of the former employee, and be applicable for no more than 24 months.

3. Data Privacy

3.1 Data Privacy Law and Employment

In France, data privacy is notably regulated by the Data Protection Law of 1978 (*loi informatique et libertés*), amended in 2018, implementing the EU General Data Protection Regulation (GDPR) locally. In the context of employment relations, the protection of employees’ personal data must be ensured by all the company stakeholders processing employees’ personal data (human resources, accounting department, etc).

The obligations to which the employers are subject notably include the following.

- Personal data processing must be carried out lawfully, fairly and in a transparent manner.
- In order to process employees’ personal data lawfully, the processing shall rely on a lawful basis. For instance, the processing can be necessary to fulfil a legal obligation or for the purposes of the legitimate interests pursued by the employer. Data processing may also be necessary for the performance of the employment contract.
- The processing of employees’ personal data cannot pursue any other objective incompatible with the purpose for which the personal data was initially collected.

- The employees shall be informed about the processing. Furthermore, employees cannot be placed under permanent surveillance, and the implementation of monitoring tools shall respect employees’ privacy.
- Therefore, the works council and the data privacy officer (if appointed) must be informed and consulted prior to the implementation of any means of monitoring employee activity and/or tools for collecting their personal information.
- The company cannot consult an employee’s conversations on a personal messaging system, nor consult emails and folders labelled as “personal” on their professional computer unless the employee is present or has been duly invited.

In recent years, former employees have increasingly requested access to their entire professional email inbox, often to support their claims in legal proceedings related to the termination of their employment contracts. Such requests are expected to continue in the coming years, particularly in light of a recent decision by the French Supreme Court which held that emails sent or received by an employee through their professional email account constitute personal data under the GDPR. As a result, employers are required to provide employees with both the metadata (such as timestamps and recipients) and the content of these emails, unless disclosing certain information would infringe upon the rights and freedoms of others.

4. Foreign Workers

4.1 Limitations on Foreign Workers

Citizens of EU countries, the European Economic Area and Switzerland benefit from provisions relating to the free movement of workers in Europe.

Non-EU citizens must have a valid permit authorising them to work in France. Valid permits include:

- residence permits, which are valid for a period of ten years, are automatically renewable and allow their holder to work in mainland France without any professional limitations; and
- temporary residence permits, which can be issued for precise, professional purposes and whose

validity period varies according to the nature of the foreign employee's contract.

4.2 Registration Requirements for Foreign Workers

Before hiring a foreign worker who resides in France, and if the worker is not registered with the national unemployment agency (*France Travail*, formerly known as *Pôle Emploi*), a company must confirm with the local authorities that the worker's permit is valid. This must be done no later than two days before the foreign employee's first day of employment.

If the foreigner does not reside in France, the company must first file a job offer with *France Travail* and look for locally qualified candidates for at least three weeks, unless the job in question is part of the regional "list of high-demand jobs" (*liste des métiers en tension*), in which case posting a job offer is not compulsory. If no unemployed person is qualified (or if there is no requirement to post a job offer), the company can file a request with the Labour Inspection (DREETS) to obtain a work permit for the foreign worker. After obtaining the authorisation, the company will have to pay a tax to the immigration authorities, the amount of which will depend on the level of remuneration and the length and type of the employment contract executed with the foreign worker.

In addition, the company must record the type and reference number of the permit authorising the foreigner to work in France in the employee register. Copies of the relevant documents must also be retained.

The above does not apply to citizens of EU countries, the European Economic Area and Switzerland, who benefit from provisions relating to the free movement of workers in Europe and, as such, do not need a work permit.

The Immigration Act of January 2024 introduced new provisions in respect of foreign workers, including:

- more flexible conditions for regularising the status of illegal workers employed in high-demand areas/jobs;
- new provisions on the granting of multi-annual residence permits for talented or skilled workers; and

- new penalties for companies employing foreigners who are not authorised to work.

5. New Work

5.1 Mobile Work

Remote work is relatively flexible in France and has become increasingly popular since the COVID-19 pandemic. Remote work refers to any form of working arrangement whereby work that could have been performed on the employer's premises is carried out by an employee away from these premises on a voluntary basis. In other words, provided that the parties agree to it, work does not have to be performed at the employee's domicile. For example, it could also be performed at a shared co-working space.

Companies can implement remote work by way of:

- a collective bargaining agreement concluded with trade unions at the company level;
- an internal policy issued after consultation of the works council (if any); or
- in the absence of a collective agreement or internal policy, an agreement with the employee.

Industry-wide collective bargaining agreements can provide for specific provisions and guidelines for companies to which the agreements apply.

Regardless of the type of documentation implementing remote work, companies are strongly advised to conclude individual remote-work agreements with the relevant employees to set out each party's rights and duties.

Remote work cannot, in principle, be imposed by the employer, except on a temporary basis in the context of exceptional circumstances, such as a pandemic. Conversely, an employee cannot impose their wish to work remotely on their employer, although an employer's refusal must be justified by objective grounds, such as technical impossibility or organisational requirements.

The tools used by the employees for their work are typically provided by the company and must be used

in compliance with the company IT policy. Rules relating to employee privacy must also apply to employees who work remotely.

The company has a duty of care with respect to remote workers' health and safety. It must notably ensure that the workspace and equipment are appropriate, prevent employee isolation, ensure a balance between private and professional life, and control workload.

There are no binding statutory rules governing the compensation of remote work. However, national collective bargaining agreements may provide for the reimbursement of expenses incurred by remote workers. This payment is exempt from social contributions, capped at an amount calculated by reference to the number of days worked remotely.

In 2025, approximately 22% of employees in France benefited from remote work arrangements, typically working remotely one to two days per week on average. Over the past year, companies that had previously adopted highly flexible remote work policies (such as allowing employees to work remotely up to four days per week) have now revised their policies to introduce greater restrictions, while still maintaining the overall principle of teleworking. At times, these changes have led to strained relations between companies and employees and/or trade unions.

5.2 Sabbaticals

Sabbatical leave enables an employee to leave the company for a few months to pursue an activity of their choosing, to carry out a personal project, etc, without terminating their employment contract.

Sabbatical leave involves a suspension of the employment contract. However, the employee remains part of the company's workforce, and remains subject to loyalty and non-compete obligations.

Conditions for Sabbatical Leave

Except as otherwise provided in any applicable collective bargaining agreements, employees must fulfil certain conditions to be eligible for sabbatical leave, including:

- they must have at least 36 months of service within the company;
- they must have undertaken a professional activity for at least six years; and
- they must not have taken sabbatical leave in the past six years.

Approval by the Company

Upon receiving a sabbatical request from an employee, the company must notify the employee within 30 days of whether it:

- accepts the request;
- accepts the request but postpones its start date, notably if this is necessary to limit the numbers of employees that would simultaneously be on leave; or
- refuses the request.

If the company does not respond within 30 days, it will be deemed to have approved the sabbatical.

Refusals can be justified if the employee does not fulfil the legal requirements, or if the absence of the employee would have a negative effect on the company's activity. In companies of a significant size (ie, with at least 300 employees), refusals can only be justified if the employee does not fulfil the legal requirements.

Remuneration During Sabbatical Leave

For the duration of the sabbatical leave, the employee is not legally entitled to any remuneration (except as provided by collective bargaining agreement or as agreed between the parties).

Nevertheless, an employee on sabbatical leave may engage in gainful employment throughout the sabbatical period, in particular to compensate them for a reduction or loss of income.

5.3 Other New Manifestations

Flex Office and Desk Sharing

Following the COVID-19 pandemic, companies of all sizes have had to adapt to a global fall in the number of employees working every day in the office and a corresponding rise in remote work. The most popular of these new working arrangements are "flex office" and "desk sharing", which allow employers to reduce

the size of their offices and, most importantly, the related costs.

Flex office is the practice of not allocating a specific workstation to an employee, but allowing them to move from one space to another depending on their tasks and missions: a free desk in their own office, a meeting space, a co-working room, a café, etc. This concept should be distinguished from the other popular concept of desk sharing, which means that employees no longer have allocated desks, but can sit wherever they like on company premises.

The implementation of these working arrangements is normally subject to prior consultation of the company's works council (if any), as these arrangements have an impact on employee working conditions.

The Status of "Platform Workers"

As of 2023, approximately 600,000 people worked as independent contractors for digital platforms in France, especially in the ride-hailing and food delivery sectors. In France, as elsewhere, this new form of work has become increasingly popular, but has also raised a number of legal issues.

These workers are typically not hired under an employment contract, and as such are not entitled to the benefits usually associated with a salaried employee status, such as paid leave or unemployment insurance. This has led many platform workers to seek the reclassification of their relationship with a digital platform as an employment contract, sometimes successfully, including in front of the French Supreme Court.

In response to this ever-growing number of workers and related disputes, the government enacted several laws to try to regulate relationships between these "independent contractors" and companies using digital platforms and apps to connect with their customers. For instance, since 2019, digital platforms have had a "social responsibility" towards their contractors, and are required to contribute to their work insurance and training costs. Platform workers may also form and join trade unions through which they can represent their collective interests.

In May 2022, the government organised elections for representatives of platform workers working in food delivery, in order to encourage social dialogue between them and the digital platforms. Since then, several national collective bargaining agreements have been negotiated, particularly on matters relating to:

- the negotiation of collective agreements in the sector;
- the minimum revenue guaranteed to platform workers; and
- the termination of commercial relations between platforms and workers.

At EU level, a Directive establishing a legal presumption of employee status for platform workers and creating a framework to regulate the algorithms used by digital platforms was formally approved by the European Parliament in April 2024 and by the European Council in October 2024. The Directive is now awaiting publication in the EU's Official Journal, after which member states, including France, will have two years to transpose its provisions into their national legislation.

6. Collective Relations

6.1 Unions

Trade unions are involved on a daily basis in many areas of labour law in France: collective bargaining, health and safety, working hours, wages, etc. Within this general framework, a specific role is assigned to so-called "representative unions".

To be considered as representative within a company, a trade union must have scored at least 10% at the last employee representative elections and must prove that it meets several criteria, including:

- respecting republican values;
- being independent vis-à-vis the employer;
- applying financial transparency;
- having sufficient influence through its activity and experience; and
- having a certain number of members.

Trade unions can be representative at the national industry level, where their main purpose is the negotiation of national collective bargaining agreements that are applicable to all companies belonging to the same industry.

Trade unions can also be representative at the company level, in which case they negotiate collective agreements applicable to company employees only. In practice, representative trade unions within a company must name union delegates, who have the power to negotiate the company collective bargaining agreements with the employer.

Trade unions and their delegates must not be confused with the works council (or *comité économique et social*, literally “social and economic committee”), which is a distinct employee representative body.

6.2 Employee Representative Bodies

Two main types of employee representative bodies should be distinguished in France: the works council and the trade union delegates.

Works Councils

The works council (*comité économique et social* literally “social and economic committee”) is composed of representatives elected by the employees during employee representative elections that occur, in principle, every four years. Members of the works council are not necessarily members of a trade union, although it is common in bigger companies.

The implementation of a works council is mandatory in companies with at least 11 employees. However, at this threshold, its role is limited. In companies with more than 50 employees, the works council must be informed and/or consulted on many economic, financial and employment matters. Its remit also includes the prevention of professional risks and the improvement of working conditions. An employer must seek and obtain the works council’s opinion before taking any binding decision affecting the general running of the company. The works council does not have a veto right.

In companies with several separate establishments, works councils can be set up for each establishment,

with one central works council covering the whole company. In addition, in large group companies, group works council can be set up to oversee projects at the group level.

Trade Union Delegates

Trade union delegates are employees chosen by trade unions that are representative within the company (ie, unions that scored at least 10% at the latest employee representative elections, among other requirements). Trade union delegates can negotiate and conclude collective bargaining agreements with the company. They are not members of the works council per se, although they may attend works council meetings, but without taking part in the votes.

Violation of Employee Representative Rights

Failure to respect provisions related to employee representatives and their protection may qualify as a criminal offence (*délit d’entrave*), which is punishable by a fine of up to EUR7,500 for legal representatives of the company (and EUR37,500 for the company itself) and/or one year of imprisonment, depending on the circumstances.

6.3 Collective Bargaining Agreements

Collective bargaining agreements are the result of discussions and negotiations between employers’ representative organisations or the employers themselves on one hand, and employees’ trade unions on the other hand. They can cover a wide range of matters relating to the employment, professional training and working conditions of employees.

Collective bargaining agreements can be entered into at different levels: at the industry level, at the company or group level, at the level of each establishment or group of establishments, etc. Industry-wide national collective bargaining agreements are very common and their application is, in most cases, mandatory in all companies belonging to the same industry. Agreements negotiated at the company level are also common.

7. Termination

7.1 Grounds for Termination

To terminate an employment contract, the employer must be able to justify its decision by reference to “real and serious” reasons. Such reasons should be documented and based on objective elements (eg, not getting along with a colleague would not be sufficient).

Personal or Economic Reasons

There are two types of reasons for dismissal:

- “personal reasons” are those reasons that are directly related to the employee’s personal situation, such as misconduct (wilful or not), refusal to follow orders, lack of competence, etc; and
- “economic reasons” are reasons that are not related to employees themselves, but rather to economic circumstances, such as economic difficulties, decrease of revenues or orders, technological evolutions, reorganisation of the company necessary to maintain its competitiveness, closing down of a company/site, etc.

Procedures to dismiss vary depending on the reason for the dismissal. In particular, a dismissal for economic reasons and a dismissal of employee representatives (who are protected) may require the involvement of the works council. Specific obligations also apply to the dismissal of employees who have been declared unfit for work.

Collective Redundancies

If an employer wishes to dismiss more than one employee for economic reasons, specific collective redundancy provisions may be triggered. The procedures are complex and vary depending on whether or not the company employs more than 50 employees, and on the number of proposed redundancies.

In all procedures, the employer must inform and consult the works council, and send documentation related to the collective redundancy to the Labour Inspection. In addition, within companies employing at least 50 employees, if more than ten redundancies are planned over the same month, the employer will have to follow a specific consultation procedure and negotiate a “social plan” (*plan de sauvegarde de*

l’emploi) with the employee representatives, providing for social measures to the benefit of the redundant employees (relating to redeployment leave, training, the prevention of psychosocial risks, additional severance indemnities, etc). The Labour Inspection is also closely involved in these projects and has to approve the social plan before it can be implemented.

7.2 Notice Periods

Notice periods are set by industry-level collective bargaining agreements and the Labour Code. They generally last between one and three months, depending on the employee’s status. During the notice period, employees must receive their salary as usual, even if the company exempts them from working during the notice. The contract may be terminated without notice (or payment of notice) in the event of serious misconduct (*faute grave*) or gross negligence (*faute lourde*).

7.3 Dismissal for (Serious) Cause

There is no at-will employment in France. If an employer intends to dismiss an employee, it must at least have cause (ie, a “real and serious reason”).

Process to Dismiss

To dismiss an employee, a specific process must be followed:

- the employee must be invited to a pre-dismissal meeting, which must not be held earlier than five working days following the invitation’s delivery (or the first attempt to deliver it);
- during the pre-dismissal meeting, the employer will explain the reasons for the proposed dismissal and give the employee an opportunity to respond;
- if the employer still wishes to dismiss the employee after the pre-dismissal meeting, it can notify the employee of their termination, no earlier than two working days after the pre-dismissal meeting; and
- this termination letter must explicitly mention the grounds for dismissal.

The final decision to dismiss must not be notified before the two working days have elapsed. Any dismissal decided in advance of this is deemed not to have a real and serious reason, which entitles the former employee to damages, usually calculated by reference to their salary and length of service.

Collective bargaining agreements can provide for a more favourable procedure.

Dismissed employees are entitled to a severance indemnity, which is determined by the law or the industry-wide collective bargaining agreement, on the basis of their average remuneration and seniority.

Misconduct

If the cause for dismissal is misconduct, the employer must, in principle, act within two months of learning of such misconduct, and the final decision to dismiss must be notified within one month after the pre-dismissal meeting. In the case of a dismissal for serious misconduct (*faute grave*) or gross negligence (*faute lourde*), the employee is dismissed without any notice or any severance indemnity.

Before initiating dismissal proceedings, or to mitigate operational risks between the employee's invitation to the pre-dismissal meeting and the meeting being held, companies can temporarily suspend the employee by way of "preventative suspension" (*mise à pied conservatoire*). This measure allows companies to carry out investigations on alleged misconduct while temporarily relieving the employee from their duties. Preventative suspension can lead to dismissal if the company finds that the employee's actions are sufficiently "real and serious", or to the employee's reintegration within the company, potentially including reclassification of all or part of the preventative suspension as a "punitive suspension" (*mise à pied disciplinaire*), if a minor misconduct was committed. In this case, remuneration will not be due to the employee during the punitive suspension period.

Economic Reasons

In respect of a dismissal for economic reasons (except for collective redundancies), additional steps must be observed, such as establishing the selection criteria that will be used to determine which employees will be made redundant and attempting to redeploy employees within the company or other group companies in France.

7.4 Termination Agreements Mutual Termination Agreements

Indefinite-term employment contracts may be terminated by means of a "mutual termination agreement" (*rupture conventionnelle*) between the company and the employee. Under this agreement, both parties agree to terminate the employee's contract on a date of their choice, with the employee being entitled to a severance payment at least equal to the severance indemnity provided by the law or the industry-wide collective bargaining agreement.

Several steps must be followed to conclude a valid mutual termination agreement, including:

- the organisation of one or several meetings to discuss the agreement;
- the execution of a legal form, which can be supplemented by a written agreement; and
- a validation by the Labour Inspection.

The whole process usually takes approximately 40 days.

An individual mutual termination agreement is not a settlement agreement under which the employee waives their right to bring future claims; an employee who has only signed a termination agreement can still file claims in connection with the performance of their employment contract (such as requests for back pay).

Settlement Agreements

When disputes arise in relation to the termination of an employment contract, the parties can settle the dispute by way of a so-called "transaction" or "settlement agreement", whereby the employee waives their right to file an action in relation to their employment contract against payment by the employer of a settlement indemnity.

To be valid, a settlement agreement cannot be concluded before the actual termination of the employment contract. In other words, employers have to be very careful when opening discussions in view of a settlement when the contract has not yet been duly terminated (eg, when such termination is only contemplated or the process is in progress).

7.5 Protected Categories of Employee

In France, some employees benefit from a specific protection against dismissal, including employee representatives (eg, trade union delegates and works council members), pregnant employees, employees on sick leave caused by a work accident or professional illness, employees declared unfit for work (*inapte*) by the occupational doctor, etc. If the provisions relating to the protection of such employees are not followed, their dismissal will be deemed null and void.

Employee Representatives

Employee representatives benefit from a specific legal protection in connection with the performance and termination of their employment contract, including for six months after the end of their tenure (or 12 months for union delegates). Such protection also applies to employees who were candidates in the last employee representative elections but were not elected, and to employees who requested the organisation of such elections.

Aside from dismissals, this protection prevents the company from imposing on these protected employees any substantial change to their employment contracts or any change in their working conditions. In addition, to dismiss a protected employee, regardless of the reason, the company must consult the works council and request authorisation from the Labour Inspection, failing which any dismissal will be deemed null and void.

8. Disputes

8.1 Wrongful Dismissal

A dismissal can be deemed wrongful for many reasons. Most reasons relate to:

- the unjustified nature of the dismissal, whether based on personal or economic grounds, in which case the dismissal will be deemed unfair or without “real and serious reason”; or
- the discriminatory nature of the dismissal, or the violation of regulations relating to protected employees, or the cancellation of a social plan, in

which case the dismissal will be deemed “null and void”.

These different grounds for wrongful dismissal have different consequences.

Unfair Dismissal Indemnity

In the event of a dismissal without “real and serious reason”, employees are entitled to an indemnity for unfair dismissal, which is fixed by the court within a minimum and maximum amount set by a scale (also called the *Barème Macron*) provided by the Labour Code, which depends on the employee’s average salary and their length of service within the company.

Indemnity for Null and Void Dismissal

If the court finds that a dismissal was null and void, the employee is entitled to an indemnity of at least six months of salary, without any upper limit for the judge to consider.

Cases where a dismissal can be deemed null and void include the following:

- violation of a fundamental right;
- dismissal in connection with psychological harassment or sexual harassment;
- dismissal pursuant to a discriminatory measure (based on gender, race, medical history, etc) or following legal proceedings brought by the employee on the basis of anti-discrimination provisions;
- following the denunciation of a crime or offence (especially if the employee is considered a whistleblower);
- violation of requirements concerning protected employees;
- violation of the provisions concerning the protection of pregnant employees, employees during leave related to birth or adoption of a child and employees who are victims of an accident at work or occupational disease; and
- annulment of the social plan and of the related redundancy procedures.

In addition, the employee has the right to be reinstated within the company (without the employer being allowed to object), and the indemnity (of at least six months of salary) will be awarded in addition to the

salary payable to the employee for the period between the dismissal and the ruling on its nullity.

8.2 Anti-Discrimination

Definition

The French Labour Code prohibits direct and indirect discrimination – ie, measures that are apparently neutral but result in a particular disadvantage for specific persons compared with others, due to discriminatory criteria. Discrimination is defined to be based on age, race, nationality, origins, gender, sexual orientation, marital status, handicap and disability, religion, pregnancy, home location, and trade union affiliation.

Duty of Care

Employers have a duty of care with respect to their employees' health and safety, and must provide a working environment that is free of discrimination. In particular, they may be held liable for the discriminatory actions of each of their employees if those acts are carried out in the context of their employment, even if it was without the approval or knowledge of the employer.

Burden of Proof

An employee who alleges discrimination on the basis of one or several of the criteria mentioned above has a lighter burden of proof:

- the employee must invoke only facts likely to demonstrate discrimination; and
- conversely, the company has to demonstrate that the difference of treatment observed in the facts brought by the employee is justified by objective non-discriminatory elements.

Claims

If a company is found to have discriminated unlawfully against an employee, the Labour Court can:

- declare the discriminatory act null and void (in particular, a dismissal or a sanction); and
- order the employer to pay damages to the employee.

In addition, an employee who is repeatedly discriminated against by their employer is entitled to claim that they have been constructively dismissed, provided

that they can prove that the facts are serious enough, and to claim related compensation on the grounds of unfair dismissal (severance indemnity, indemnity in lieu of notice period, unfair dismissal indemnity of at least six months of salary, etc).

As per the French Criminal Code, refusing to hire an employee or disciplining or dismissing an employee on discriminatory grounds are also criminal offences punishable by up to three years of imprisonment and a fine of up to EUR45,000 (for the company legal representative) or EUR225,000 (for the company itself).

8.3 Digitalisation

While procedures and discussions with the French administrative authorities have become increasingly dematerialised (such as the submission of collective bargaining agreements, collective redundancy documentation or mutual termination agreements through online governmental platforms), dispute resolution in France still typically requires “in person” meetings/proceedings. Conducting court proceedings via video remains very rare, based on exceptional circumstances (such as during the COVID-19 pandemic).

9. Dispute Resolution

9.1 Litigation

Relevant Courts

Individual employment disputes between employers and employees are referred to the relevant Labour Court (*conseil de prud'hommes*), which is a tribunal composed of judges selected by the employee trade unions and the representative employers' organisations at a national level. A judgment panel includes an equal number of employee and employer representatives.

In addition, the Civil Court (*tribunal judiciaire*) has jurisdiction to hear all collective employment disputes, particularly in respect of collective negotiations and strikes, and matters concerning electoral law and elections in the workplace.

Class Actions

Since 2016, certain associations have been allowed to launch class action claims before the Civil Court in

a limited number of cases, namely for the breach of provisions relating to:

- discrimination;
- health;
- environment; and
- data protection.

Such class actions may seek to obtain compliance with the law and, if appropriate, the award of damages.

A new Act dated 30 April 2025 (the “DDADUE Act”) implements a comprehensive overhaul of class action procedures, establishing a unified regime and broadening the scope of class actions. These new provisions, which apply to all class action proceedings initiated on or after 3 May 2025, are expected to significantly impact labour law litigation in the coming years. For more details on the regime applicable to labour law disputes, see the Trends and Developments chapter in this guide.

Representation

Representation in front of the Labour Court is not mandatory, and employees sometimes represent themselves or are represented by certified trade union representatives instead of attorneys. However, attorney representation is mandatory in front of the Court of Appeal and the Civil Court.

9.2 Alternative Dispute Resolution

Alternative dispute resolution is not common practice in labour and employment law matters in France; in the event of a dispute, the matter is usually referred to the courts. That being said, in practice, collective labour disputes such as strikes may be resolved by various means other than judicial proceedings, such as arbitration, mediation and conciliation, which constitute alternative dispute resolution.

- Conciliation is an optional alternative dispute resolution method for collective labour disputes whereby the parties try to reach a mutually acceptable settlement of their dispute via a third party. Conciliation takes place before a commission consisting of three members, representing employees, employers and the state. This type of conciliation process must not be confused with the conciliation hearing, which takes place before the Labour Court and is part of the common judicial procedure.
- Mediation is another alternative dispute resolution method, which may be implemented following a failure of the conciliation process or upon request. Unlike the conciliator, the mediator has certain powers (to make enquiries, seek expert opinions, etc). Mediation can be used in collective or individual labour disputes.
- Arbitration is a third alternative dispute resolution method whereby the parties entrust an arbitrator to take a decision either at law or in equity with regard to the dispute. However, case law has specified that arbitration clauses provided in employment contracts are not enforceable against individual employees – ie, employees can still choose to refer their case to the Labour Court instead, even if a clause provides for mandatory arbitration.

9.3 Costs

Courts in France typically order the losing party to pay for the costs of proceedings (*entiers dépens*).

In addition, parties usually make a specific claim for the payment of a lump-sum indemnity pursuant to Article 700 of the Civil Procedure Code, which covers their attorney’s fees and other legal fees in whole or in part. In most cases, the losing party is sentenced to pay this indemnity, although its amount may be lowered if the court deems it to be too high, which it is more likely to do when the losing party is the employee.

Trends and Developments

Contributed by:

Laetitia Tombarello and Audrey Demourgues
Bredin Prat

Bredin Prat was founded in 1966 and has offices in Paris and Brussels. The firm now has more than 200 lawyers committed to the highest standards of excellence advising French and international clients on complex or sensitive transactions or contentious matters. Bredin Prat's practice areas include corporate law (M&A, private equity, capital markets,

governance), litigation and white-collar crime, competition and EU law, arbitration, tax, employment, financing, restructuring and insolvency, public law, tech law, and financial services and insurance regulatory. Cross-border matters represent more than two-thirds of the firm's work.

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B R E D I N P R A T

Over the past 12 months, two significant developments in labour law have been particularly noteworthy. The first is the expansion of the scope of class action lawsuits. The second is the introduction of a new requirement to consult the works council on sustainability matters. Both reforms result from the transposition of European regulations into French law, highlighting the growing influence of European legislation on labour law in France.

Reform of Class Action Lawsuits

Class actions, defined as legal proceedings initiated by a representative on behalf of a group of individuals with identical or similar rights, and seeking a judgment applicable to all members, were first introduced into French law in 2014. Until recently, several distinct regimes existed, each limited to specific subject areas (such as consumer disputes, health or environmental matters, workforce discrimination, personal data protection, or real-estate renting). Due to these constraints, only about 35 class actions have been filed in France since 2014, with just one resulting in a finding of liability against a company.

On 30 April 2025, following five years of parliamentary debate, the so-called “DDADUE Act” was enacted to align French law with recent European regulations. Among its various provisions, the Act implements a comprehensive overhaul of class action procedures, establishing a unified regime which is expected to significantly impact labour law litigation in the coming years.

Expanded scope of labour law class actions

The DDADUE Act considerably widens the scope of class actions in labour law, which were previously confined, with respect to employees, to cases of workplace discrimination and personal data protection. Under this new Act, as of 3 May 2025, class actions may now be brought against employers for any “breach of their legal or contractual obligations” that affects “several persons under the authority of the employer”.

Such class actions may seek both cessation of an alleged breach by the employer and/or compensation for resulting damages.

This broad scope expands the matters that may give rise to class actions, which could now be considered to cover the entire field of labour and social security law, including, for example, violation of a collective bargaining agreement, breach of rules relating to working time, or lack of respect of employee representation regulations. Furthermore, while employees remain the primary beneficiaries, other individuals – such as interns, temporary workers, and subcontractors – may also be included in a class action, provided the alleged breach concerns a provision of the French Labour Code and the employer exercises some form of authority over them.

As a result, certain companies, notably digital platforms, which previously faced only individual claims from independent contractors seeking to have them recognised as employer or co-employer, could be particularly exposed to class actions under this new regime.

Organisations entitled to initiate class action proceedings

As was the case before the DDADUE Act, class actions related to labour law issues cannot be brought directly by affected individuals, but must be initiated by a qualifying organisation, the list of which has been extended to:

- a representative trade union within the company (ie, a trade union which secured at least 10% of the employees’ votes in the most recent company-level professional elections), or at professional branch or national level (ie, unions which secured at least 8% of the votes at the corresponding level), or,
- a non-profit association belonging to a specific list of associations approved by the authorities, and subject to certain conditions, such as having been publicly active for 12 months in defending the interests that have allegedly been breached, providing in its statutes for the defence of such interests, being independent, not being subject to insolvency proceedings, being independent, and providing information to the public regarding their operations and funding, or,
- for actions solely seeking the cessation of a breach (ie, without compensation claims), a non-profit association, even if not on the official list of asso-

- ciations approved by the authorities, provided notably that it has been registered for at least two years, has 24 months of public activity defending the interests that have allegedly been breached, and providing in its statutes for the defence of such interests, or,
- the public prosecutor (*ministère public*), who may act as a main party (but only for the cessation of a breach), or intervene as a joined party in any class action.

In addition, new measures provided by the DDADUE Act are expected to lead to an increase of the number of class actions to be initiated in the future, namely the possibility for any qualified organisation to substitute the organisation that originally initiated the class action, if it can no longer pursue it, to ensure continuity of the lawsuit. Furthermore, trade unions or associations are allowed, under certain circumstances, to seek external funding for class action proceedings, provided, however, that such funding is made public and that it has neither for purpose nor effect the exercise by these third parties of any influence over the initiation or conduct of the class action that could be detrimental to the interests of the persons represented.

Applicable legal procedure

The DDADUE Act introduces a new, unified procedure for all class actions, with certain specificities pertaining to labour law matters.

Preliminary notice

Before filing a class action based on a breach of the French Labour Code, the initiating party (such as a trade union or association) must formally request that the employer cease the alleged breach. The employer then has one month to inform the works council and representative trade unions within the company (if any) of such request. If the works council and/or one or more trade unions demand it, the employer must engage in discussions regarding corrective measures in relation to the alleged breach.

Court referral

The class action must be filed with one of the specifically designated judicial courts (the list of which is to be published by Decree), either six months at

the earliest after the initial request to the employer to cease the breach or immediately if the employer rejects the request. The court is vested with broad powers, including the ability to order, before any ruling on the merits of the case, interim measures to halt ongoing harm or prevent manifestly unlawful acts during proceedings.

Proceedings and remedies when the parties seek to cease an alleged breach

When an organisation ultimately initiates a class action lawsuit with the aim of putting an end to a breach, it is not required to establish either harm or the employer's intent or negligence. If the court finds that a breach has occurred, it may order the employer to bring such breach to an end and to take, within a timeframe it sets, all necessary measures to that effect, if necessary, with the assistance of a third party appointed by the court. The court may also attach a penalty payment (*astreinte*) to its decision, which is to be paid into a fund dedicated to financing group actions. Finally, appropriate publicity measures may be imposed on the employer to inform those who may be affected by the action.

Proceedings and remedies when the parties seek compensation for harm

When a trade union or an association files a class action lawsuit seeking compensation for harm suffered, the DDADUE Act distinguishes between two procedures, summarised as follows.

- A procedure in which the trade union or the association presents individual cases for the court to rule on. The court decides on the employer's liability in these cases, defines the criteria for inclusion of the relevant employees/persons in the affected group, and determines the harm to be compensated for each category of persons. Where possible, the court may set an amount of compensation or provide the elements allowing its assessment on a case-by-case basis. The court also sets the period – between two months and five years – during which employees meeting the inclusion criteria and wishing to rely on the judgment regarding liability may join the class action group in order to obtain compensation for their harm. Finally, the court orders, at the employer's expense, appropriate

publicity measures to inform those who may have suffered harm as a result of the established breach.

- A collective procedure for the liquidation of harm (with the exception of harm resulting from bodily injury) in which the court, after finding the employer liable, authorises the trade union or association to negotiate a settlement agreement with the employer on compensation for all affected persons within a period set by the court which cannot be less than six months. The parties must then determine the harm to be compensated for each category of persons or, failing that, the elements allowing its assessment. The settlement agreement is then subject to approval by the court, which verifies whether it is in accordance with the interests of the parties and grants it enforceable status. In the absence of an agreement, or upon expiry of the period, the court will rule on the harm eligible for compensation (under the principles mentioned in the paragraph above).

The DDADUE Act also allows for the implementation of a mediation procedure between the party bringing the action and the employer, under the supervision of a mediator appointed by the court.

Joining the class action as an employee

To benefit, where applicable, from compensation obtained through a collective action, affected employees must submit a claim for compensation either directly to the employer found liable or to the trade union or association fronting the class action, which then receives a mandate for this purpose. The claim must be made within the time limits set by the judgment.

Class actions, whether aimed at putting an end to a breach or at compensation for damages, suspend the limitation period for individual actions seeking compensation for damages resulting from the breach established by the court, or facts retained in the settlement agreement approved by the court. The limitation period begins to run again, for a duration that cannot be less than six months, from the date on which the judgment is no longer subject to appeal (either to the Court of Appeal or to the French Supreme Court) or from the date of the approval of the settlement agreement by the court.

Civil fines

In addition to damages, the court may impose, upon request from the public prosecutor (*ministère public*), a civil fine if the employer is found to have acted deliberately for gain or to achieve undue savings. The amount of the fine is set by the court in proportion to the seriousness of the misconduct and the benefit derived by the employer. It can reach up to five times the profit derived from the unlawful conduct if the employer is a legal entity, representing a significant financial risk for companies, particularly as the DDADUE Act specifically provides that such fines are not insurable.

By exception, this civil penalty will not apply to any proceedings initiated from 3 May 2025, but only to class actions in which the event giving rise to liability occurred as from that date.

Impact on individual lawsuits

Once a class action judgment is final, individuals compensated through the action cannot bring separate claims on the same grounds. However, claims for different types of harm remain available through ordinary legal channels.

By extending class actions to virtually all aspects of the employment relationship, the DDADUE Act substantially increases litigation risks for employers. The potential for large-scale claims and significant civil fines highlights the need for rigorous compliance with labour laws and proactive dispute resolution to mitigate the risk of collective actions.

Obligation to Consult Works Councils on Sustainability Issues

The transposition of the European Corporate Sustainability Reporting Directive (CSRD) into French law has reinforced companies' non-financial reporting obligations. Under the transposed CSRD, companies exceeding certain thresholds must now include a dedicated section in their management report detailing how sustainability issues (environmental, social, and governance) impact the company. Additionally, under the newly amended Article L. 2312-17 of the French Labour Code, certain companies are required to consult their works councils on sustainability issues, and

on the means for obtaining and verifying sustainability information.

Companies subject to the new works council's consultation obligation

The companies concerned are those required to include sustainability information in their management report, namely:

- large companies (ie, companies that exceed at least two of the following thresholds at the end of the financial year: balance sheet total (*total de bilan*) of EUR25 million, net turnover of EUR50 million, and an average of 250 employees);
- small and medium-sized companies (ie, companies that exceed at least two of the following thresholds at the end of the financial year: balance sheet total (*total de bilan*) of EUR7.5 million, net turnover of EUR15 million, and an average of 50 employees) whose securities are listed on a regulated market;
- parent companies of large groups (ie, groups exceeding, on a consolidated basis, at least two of the following thresholds at the end of the financial year: balance sheet total (*total de bilan*) of EUR30 million, net turnover of EUR60 million, and an average of 250 employees); and
- companies exempted from including sustainability information in their management report because they are already accounted for in the sustainability information included in the report of a controlling company or another consolidating company.

The phased implementation of the works council consultation requirement was recently adjusted by the DDADUE Act, which postponed its application by two years for certain companies. This aligns with the EU Commission's "Omnibus I" proposal and the adoption of the "Stop-the-Clock" Directive in April 2025. These developments reflect a growing trend to reduce regulatory burdens in order to support European businesses facing a challenging global environment, and follows increasing concerns among French and EU policymakers regarding the competitiveness of European companies – particularly in light of the war in Ukraine, rising energy prices, and shifting global trade dynamics.

The amended regulations now provide that CSRD obligations, including the requirements for works council consultation, have been/will be applicable to the following entities:

- *since 1 January 2025* large companies or parent companies of a large group with an average of more than 500 employees (at company level or consolidated group level) and whose securities are listed on a regulated market, or meet certain characteristics of credit institutions, or insurance/reinsurance companies, or healthcare institutions;
- *from 1 January 2028* – all other large companies or parent companies of large groups; and
- *from 1 January 2029* small and medium-sized companies listed on a regulated market, as well as subsidiaries or branches of non-European companies exceeding certain thresholds.

Content and modalities of the new consultation

According to the new regulations as amended by the DDADUE Act, works councils must be consulted during at least one of the three recurring annual works council consultations, namely:

- the consultation on the company's strategic orientations;
- the consultation on the company's economic and financial situation; and/or
- the consultation on the company's social policies, working conditions, and employment.

By reference to Articles R. 232-8-4 (for large companies and parent companies of large groups) and R. 22-10-29 (for small and medium companies listed on a regulated market, for which the content is simplified) of the French Commercial Code on the sustainability information to be included in management reports, the French Labour Code provides that the works council's consultation must cover information enabling the employee representatives to understand the impact of the company's activities on sustainability issues, as well as the effect of these issues on the company's business, results, and situation. The consultation must also address the means for obtaining and verifying this information.

More specifically, companies required to prepare a management report must consult their works council on the sustainability information contained in the report. The situation is less clear for companies required to consult their works council on sustainability but exempt from including such information in their management report. Legal commentary suggests that the consultation should focus on the parent company's report, with particular attention to the impact on the relevant subsidiary, notably on the grounds that the works council's prerogatives primarily concern information that directly concerns and interests the company.

Also, the broad language of the new provisions does not specify what constitutes sufficient information regarding "the means for obtaining and verifying sustainability information". Some legal scholars suggest that this may refer to the processes established by the company to collect sustainability data from various stakeholders, as well as verification measures implemented by the company, for example, in the context of the certification report issued by statutory auditors and/or independent third parties' reports.

Seeking further clarification on these points will be a top priority for companies in the coming years to ensure compliance with the new consultation process. Notably, failure to comply with works council consultation requirements could constitute a criminal offence (*délit d'entrave*), punishable by a fine of up to EUR7,500 for company representatives (and EUR37,500 for the company itself).

In the interim, companies already subject to these new consultation requirements are strongly encouraged to take three steps, as follows.

- Identify the most appropriate recurring consultation for addressing sustainability issues with the works council. To date, legal commentators consider the consultation on the company's economic and financial situation to be the most suitable, as the management report (including sustainability information) and the corresponding auditors' report are provided to the works council in advance of this meeting. This would also allow the company to take into account in the report for the following

financial year potential observations from employee representatives, which would ensure the effectiveness of the work council's consultation.

- Prepare, ahead of the relevant consultation, an informative document for employee representatives, detailing relevant data, collection methods and verification mechanisms. Where a consolidated management report is involved, company-specific data should be highlighted, particularly regarding activities, products or geographic areas concerned, in line with the works council's scope of competence.
- Where feasible, consider negotiating a collective agreement with representative trade unions to define the modalities of this new consultation.

These legislative developments mark a significant evolution in French employment law, underscoring the growing importance of collective rights and sustainability in corporate governance. Nevertheless, in the current political and global context, uncertainty remains regarding the future of measures such as the CSRD regulations. With the "Omnibus I" legislative proposal of February 2025, the European Commission expressed its intention to alleviate the regulatory and administrative burdens faced by European companies, particularly those involved in the ecological transition, by streamlining sustainability, due diligence, and taxonomy reporting requirements. This initiative forms part of a broader strategy to strengthen the EU's competitiveness, particularly in response to recent reports highlighting a decline in the productivity of European industry compared to China and the US. French President Macron has signalled his alignment with this approach and pushed even further in May 2025 by calling for the repeal of the EU Directive on the duty of vigilance (the so-called "CS3D"), a position that has also been endorsed by the German Chancellor.

In light of these factors, further changes will likely emerge in the coming months and years, potentially introducing greater flexibility to sustainability regulations in France and across the EU, including for companies already subject to the CSRD. Against this backdrop, it is not impossible that the rules could be relaxed somewhat or even switched back to a previous state, making it all the more essential to monitor this evolving landscape.

GIBRALTAR



Law and Practice

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Ellul & Cruz is a full-service Gibraltar law firm founded in 1973. It was born of the merger of Ellul & Co and Cruzlaw in 2024. Ellul & Co was founded by Eric C Ellul in 1973 and Cruzlaw was founded by Nick Cruz in 1996. Led by Marc X Ellul and Nick Cruz, Ellul & Cruz has a broad local practice that includes advice and representation in all employment-related matters. The firm draws clients from a diverse range of industry and service sectors and is instructed in both contentious and non-contentious matters. As advo-

cates, Ellul & Cruz lawyers represent both employers and employees in employment tribunals and through to the court of appeal. The firm's work includes advising on contracts of employment (and drawing them up), company handbooks, discipline and grievance procedures, and unfair, wrongful and constructive dismissal, as well as advising on discrimination, employee rights and bullying. Ellul & Cruz is the Gibraltar member of the Employment Law Alliance, an international network of employment lawyers.

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ELLUL & CRUZ

1. Employment Terms

1.1 Employee Status

Self-employed individuals do not have the same rights as employees under Gibraltar law. Self-employed individuals are also responsible for their own tax and social insurance payments, which are normally handled by the employer in respect of the employees.

1.2 Employment Contracts

Employment contracts may be for an indefinite period or for a fixed term. The Fixed Term and Part-Time Employees (Prevention of Less Favourable Treatment) Regulations 2003 aim to prevent fixed-term and/or part-time employees being treated less favourably than similar permanent and full-time employees and limit the use of successive fixed-term contracts.

In order to engage an employee, an employer must be registered as such under the Business Trades and Professions Registration Act 1989 and must also register with the Income Tax Office. In addition, a Notification of Vacancy form must be completed, and all vacancies must be registered with the Department of Employment before seeking to engage a person as a worker.

A Notice of Terms of Engagement must also be completed and submitted to the Department of Employment for all workers. This notice must set out certain terms of the employee's employment, including wages and notice periods. A copy must be given to the employee. Any changes to the employment relationship must be notified to the Department of Employment on a prescribed form.

1.3 Working Hours

The Working Time Act 1999 (WTA) provides specific rules governing the working hours, breaks, and holidays of workers. A person is considered a worker for the purposes of the WTA if such a person is engaged under a contract of employment or provides work or services under a contract that is not a contract for professional services.

There is a 48-hour limit on average weekly working hours, including overtime. The average number of hours worked are calculated by reference to a 17-week period. There are some special case exemptions that allow for a 26-week reference period and possibly a reference period of a full year where a collective or workforce agreement provides for this. It is possible for individuals to opt out of the 48-hour limit, but such agreements are terminable at no more than three months' notice and increase the employer's record-keeping burden. This category is open to wide interpretation and employment contracts frequently include provisions for working hours above the 48-hour limit for professionals and managerial staff. The 48-hour limitation does not apply to those whose working time cannot be measured or predetermined.

Night-Time Work

The normal working hours of a night worker must not exceed an average of eight in each 24-hour period. In the case of a night worker whose activities involve special hazards or heavy, physical or mental strain, there is an absolute limit of eight hours. Night-time means the period between 11pm and 6am. The precise period can be determined in a relevant agreement

and, in the absence of such an agreement, it will be construed as 11pm to 6am.

Part-Time Work

Part-time workers have the same rights/entitlements as full-time workers, unless there is an objective justification for the difference in treatment. Part-time workers accrue rights over time in the same way as full-time workers. The duration of the annual holiday of part-time employees is calculated pro rata to that of an employee who works a five-day working week.

Overtime

If an employee is expected to work regular overtime, it is good employment practice to state this clearly in the employee's contract of employment, together with:

- whether overtime is compulsory or voluntary;
- rates of overtime pay;
- when overtime becomes payable;
- any notice arrangements for overtime working; and
- the authorisation process for overtime work.

Overtime rates are a matter for agreement between employer and employee or on an industry-wide basis. There are certain minimum statutory levels and overtime pay varies from business to business.

Typical rates for overtime are:

- weekdays and Saturdays – one-and-a-half times the normal hourly working rate;
- Sundays and public holidays – double the normal hourly working rate (Sunday shop workers may be an exception); and
- Christmas Day and New Year's Eve – double the normal hourly working rate and above.

1.4 Compensation

The Chief Minister, in his capacity as the Minister for Finance, announced in his budget address on 30 June 2025 that the minimum wage would rise by from GBP8.90 to GBP9.50 per hour; a rise of just over 6%. Based upon a 37.5-hour week this amounts to GBP356.25 per week. On this same basis, this comes to an annual salary of GBP18,525, which is equivalent to a minimum monthly wage of GBP1,543.75.

All employees in any undertaking, or any branch or department of an undertaking, are entitled to a minimum hourly, weekly and monthly remuneration. This does not include:

- employees who are engaged in a full-time course of education and who are employed during academic holiday periods;
- apprentices or trainees whose service ends at the end of their apprenticeship or traineeship; and
- domestic servants working in private households or seafarers employed on a sea-going vessel registered in Gibraltar.

It is not unusual to reward employees through bonuses in some sectors, such as financial services. Although many bonus schemes are described as discretionary, they are likely to be subject to implied duties and should be operated in a way that does not discriminate or breach the Equal Opportunities Act 2006.

1.5 Other Employment Terms

Annual Holiday Entitlements

The Employment (Annual and Public Holidays) Order 1969 (EAPHO) provides specific rules on the duration of an employee's annual holidays and the related payment.

According to Section 4 of the EAPHO, between January 1st and December 31st each year, an employer is required to allow a holiday to every employee who was employed for a period of four weeks or more during the 12 months immediately preceding January 1st of that year (such 12 month-period is hereinafter referred to as the "qualifying period"). The duration of an employee's annual holiday entitlement is linked to the period of their employment, with the employer during the qualifying period, the employee's continuous service and the amount of working days a week the employee is contracted to work. The duration of an employee's annual holidays are calculated in accordance with the tables set out in Schedule 2 of the EAPHO. The duration of the annual holiday of part-time employees is calculated pro rata to the full-time employees' entitlement.

Application of annual holiday entitlements

The initial minimum paid annual holiday entitlement is 15 days for employees working at least five days a week, increasing gradually to 25 days for employees who have attained eight years of service. There is no statutory unpaid holiday entitlement.

Employees are entitled to take annual holidays on consecutive days. Any rest days or public holidays that fall during the annual holiday period do not count as days of annual holiday.

An employer is required to give employees a reasonable notice of the commencement date(s) of their annual holiday periods. This notice may be given individually or by the posting of a notice in the place where the employees are employed.

End of employment holiday pay

Where an employee ceases to be employed by an employer, the employer is required to – on termination of the employment – pay to the employee one day's holiday pay in respect of each day of accrued annual holiday to which the employee would have been entitled, minus any days of annual holiday already taken. However, holiday pay is not payable to an employee where:

- the employee is dismissed on the grounds of either dishonesty or misconduct and is so informed by their employer at the time of dismissal; or
- the employee leaves the employment without giving the employer notice of termination of employment in accordance with Section 54 (2) of the Employment Act 1932.

Where an employee dies while in the employment of an employer, the amount of any accrued holiday pay to which the employee would have been entitled had a notice to terminate the employment been given to the employer – expiring on the date of their death – is due and payable to the legal personal representative of the employee by the employer.

Nonetheless, the above-mentioned provisions of the EAPHO do not prevent any employer allowing annual or public holiday conditions or the payment of holiday

remuneration on terms more favourable than those prescribed.

Sick Leave, Illness and Incapacity

Under the Employment (Sick Pay) Order of 1974, within any period of 12 months (calculated from the first day of an employee being absent from work owing to illness), sick leave is payable as follows: full pay for two weeks and, thereafter, half pay for four weeks. Therefore, after an employee has taken six weeks of sick leave within said 12-month period, they are not entitled to receive any further payments from an employer for any subsequent days of sick leave taken.

Time Off for Urgent Family Reasons

Pursuant to Regulation 29 of the Employment (Maternity and Parental Leave, And Health And Safety) Regulations 1997 (EMPHS), employees may take five days a year unpaid leave for emergency family reasons such as sickness or accident affecting a member of their immediate family that makes the employee's presence indispensable. "Immediate family" means a child under the age 18, a parent or spouse but also includes a dependant who has no other means of support or assistance.

Maternity Leave

The law governing maternity leave is set out in Regulations 1 to 18 of the EMPHS. It allows for a period of 14 weeks' unpaid maternity leave, provided that the employee has worked with an employer for at least two years (calculated up to the start of 11 weeks before the expected week of childbirth).

Parental Leave

Regulation 26 of the EMPHS also entitles employees to take four months' parental leave – limited to no more than four weeks in any one year – following the birth or adoption of their child. This can only be taken during the period up to the child's fifth birthday or the fifth anniversary of adoption (as the case may be).

Pension Entitlement

The Private Sector Pensions Act 2019 (PSPA) was enacted in August 2021 to establish a framework for private sector pensions, ensuring that employees in Gibraltar have access to workplace pensions should they wish to do so. The PSPA makes it compulsory for

all employers in Gibraltar, starting with the largest (in number of employees), to provide all eligible employees with access to a pension scheme in addition to the existing state pension. Should the employee elect to take up the pension scheme, the PSPA makes it compulsory for both the employer and employee to contribute a minimum amount each week or month (depending on the intervals at which the employee is paid) to the employee's pension fund.

As employers must contribute to the pension scheme on behalf of the employee, this fosters shared responsibility for retirement savings between employer and employee. The employee is required to contribute a portion of their salary to their pension scheme, which may be matched or supplemented by employer contributions.

The requirements of the PSPA will come into effect at different times, depending on an employer's size. This is calculated by the number of employees. The different employer bands and the number of employees (according to which, membership of each band is measured) – as well as when the requirements of the PSPA start to apply to each of the different-sized employers – are:

- enterprise (251 employees or more) – 1 August 2021;
- large (101–250 employees (inclusive)) – 1 July 2022;
- medium (51–100 employees (inclusive)) – 1 July 2025;
- small (15–50 employees (inclusive)) – 1 July 2026; and
- micro (14 employees or fewer) – 1 July 2027.

The Gibraltar Financial Services Commission is appointed as Pensions Commissioner under the PSPA to ensure that the requirements are complied with by employers and by the administrators of pension schemes.

Social Insurance

Contributions by employers and employees are as follows subject to the minimum and maximum levels set out below:

- Employers – 18% of gross earnings with a minimum contribution of GBP1,662.57 and a maximum of GBP2,923.83 per annum.
- Employees – 10% of gross earnings with a minimum contribution of GBP745.29 and a maximum of GBP2,121.21 per annum

2. Restrictive Covenants

2.1 Non-Competes

There are no statutes pertaining to covenants not to compete in Gibraltar.

The types of covenants commonly used in employment contracts are:

- non-solicitation covenants to prohibit a former employee from soliciting the customers or clients of the employer;
- non-dealing covenants to prohibit a former employee from dealing with the customers or clients of the employer;
- non-competition covenants to prohibit a former employee from engaging in a competitive activity within a particular area or a time-scale (or both); and
- non-solicitation or non-poaching of employees covenants to prohibit a former employee from soliciting their ex-colleagues.

Covenants will only be enforceable if they are considered reasonable, taking into account factors such as:

- the nature of an employee's work and what information they had access to;
- whether the "clients" and "employees" are restricted to those with whom the former employee had dealings; and
- the size of an area restriction and its duration (this may be particularly relevant to a jurisdiction as small as Gibraltar).

If restrictive covenants are disregarded or if confidential information is misused, an employer can seek damages against an employee/ex-employee or obtain an injunction restraining them from breaching said covenants or misusing said confidential information.

It may also be possible to sue the new employer for inducing a breach of contract or breach of confidence.

2.2 Non-Solicits

See 2.1 Non-Competes.

3. Data Privacy

3.1 Data Privacy Law and Employment

Pursuant to the Gibraltar General Data Protection Regulation (GDPR), which came into force on 25 May 2018, data collected, processed, stored and accessed should be restricted to the minimum for each specified purpose and only be kept for as long as necessary. Current legislation in Gibraltar maintains the data protection standards that applied in Gibraltar as a result of EU law (ie, the EU General Data Protection Regulation 2016/679 and the EU Law Enforcement Directive 2016/680) prior to Brexit and the end of the transition period.

Individuals, including employees, have the right to be informed of how their data will be used. They can access, rectify, erase and object to data being held or processed. They also have the new right of portability – that is, the data can be transferred to another organisation on request.

Employers are not able to process data until they show that a legitimate interest or legal basis outweighs the interests or rights of the employee. Any data held on paper or electronically should be available to the individual electronically – free of charge and in a commonly used format – within one month.

Legal Basis

In the employment context, a “legal basis” is needed to justify the processing of each data category. A legal basis can be a statutory requirement, such as recording for tax purposes, necessary for a legal obligation, or for the performance of the contract (eg, paying the individual or ensuring work is performed). For much employee data, the legal basis will be a “legitimate interest” – for example, capturing data to improve workforce performance or to respond to a dispute.

4. Foreign Workers

4.1 Limitations on Foreign Workers

The Employment Regulations 1994 (the “Employment Regulations”) provide that it is an offence to engage a worker other than an entitled worker, as defined in the Employment Regulations, without having first obtained a permit in respect of that worker. “Entitled workers” are defined in Regulation 6 (4) and include:

- European Economic Area (EEA) nationals and their family members;
- Swiss nationals;
- persons entitled to seek and take up employment in Gibraltar by virtue of their nationality or residency; and
- persons falling within Section 14 (1) of the Immigration, Asylum and Refugee Act, etc.

All other workers must have a work permit to work in Gibraltar. It is as yet unclear what the position of EU workers will be in the future, given that the UK and Gibraltar left the EU on 31 December 2020.

Currently, discussions between the Gibraltar, Spanish and UK governments have meant that there is an expectation that “a Gibraltar solution” will be found that will accommodate the parties’ desire for Gibraltar to enter the Schengen area and for free movement to prevail. This is currently the subject of a treaty negotiation between the EU and the UK. In the meantime, the treatment of previously “entitled workers” remains the same.

Work Permit Applications

Where applicable, a work permit must be obtained before employment commences and will only be issued for 12 months at a time. The application is made by the employer to the Director of Employment. The employer must lodge a deposit with the Director of Employment for the amount that would be required to repatriate the employee on termination.

Applications are usually processed within two to three weeks. Failure to obtain a work permit is subject to financial penalties. Non-EU nationals require residency permits if they wish to reside in Gibraltar. A person

who is not entitled to reside in Gibraltar and does so without a permit will not be allowed to stay.

Applications must be made to the Civil Status and Registration Office. It takes around four weeks (or, in some cases, more) to obtain a residency permit.

4.2 Registration Requirements for Foreign Workers

As mentioned in **1.2 Employment Contracts**, in order to engage an employee, the employer must be registered as such under the Business Trades and Professions Registration Act 1989 and must also register with the Income Tax Office.

5. New Work

5.1 Mobile Work

Employers and employees may agree on working from home arrangements or for employees to be working while in transit, where this is appropriate for the type of business. Depending on the implementation of the arrangement, this may involve the employer issuing IT equipment or software that – once installed in an employee's premises or on their private devices – enables them to have the same level of access to the employer's network, systems and resources as they would have if they were in the workplace. Employers must, however, implement appropriate technical and organisational measures to ensure compliance with data protection obligations under the Gibraltar GDPR and the Data Protection Act 2004 (DPA) in respect of the employees working remotely.

As regards the monitoring of working from home arrangements, the employer must ensure that any use of employees' personal data complies with the data protection law and identifies a lawful basis under Article 6 of the Gibraltar GDPR and Article 9 of the Gibraltar GDPR in respect of special categories of personal data, where applicable.

5.2 Sabbaticals

There is no statutory right to request or take a career break or a sabbatical (paid or unpaid) for employees. However, such arrangements may be included in an employment contract or employee handbook as part

of the employer's employee retention strategy. A sabbatical would generally be subject to a negotiation between the employer and the employee, rather than a contractual or legal right.

5.3 Other New Manifestations

Gibraltar does not currently have in place extensive regulations regarding new working arrangements such as desk sharing.

6. Collective Relations

6.1 Unions

The law on trade unions is largely governed by the Trade Unions and Trade Disputes Act 1947, which was supplemented by the Employment (Trade Union Recognition) Regulations 2023 with regard to the recognition of trade unions by the employers.

In order for a trade union to be able to conduct effective collective bargaining on behalf of its members, it must be registered in accordance with the provisions of the Trade Unions and Trade Disputes Act 1947.

An employee has the following rights in relation to their employer:

- the employee may not be refused employment because of membership or non-membership of a trade union; and
- dismissal for membership of, or for taking part in the activities of, an independent trade union is deemed automatically unfair for the purposes of the Employment Act 1932.

6.2 Employee Representative Bodies

Where an employer is proposing to dismiss as redundant five or more employees at one establishment within a period of 90 days or less, the employer is required to consult about the dismissals all persons who are the appropriate representatives of any employees who may be affected by the proposed dismissals or by measures taken in connection with those dismissals.

The appropriate representatives of any affected employees are the representatives of the trade union

(if the employees are of a description in respect of which a trade union is recognised by their employer) or, in any other cases, the employees' representatives elected by the employees in accordance with Section 76 (3)(b) of the Employment Act 1932.

6.3 Collective Bargaining Agreements

Collective bargaining agreements are negotiated between trade unions and the employers or employers' associations. Collective bargaining agreements form the basis of an individual's contract of employment, provided certain conditions are met.

7. Termination

7.1 Grounds for Termination

Employees with at least a year of continuous service can only be dismissed for a fair reason, namely:

- a reason related to capability;
- a reason related to conduct;
- redundancy;
- the inability of employee to continue working without contravening the law; or
- some other substantial reason of a kind to justify the dismissal.

The employer has the burden of proving the reason for dismissal.

Redundancy

Redundancy is a potentially fair reason for dismissal, if there is a genuine redundancy situation.

Section 65 (7)(c) of the Employment Act 1932 provides that any reference to redundancy or to being redundant shall be construed as a reference to the fact that:

- the employer has ceased (or intends to cease) to carry on the business for the purposes of which the employee was employed by the employer or has ceased (or intends to cease) to carry on that business; or
- the requirements of that business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish.

The definition of redundancy therefore incorporates three main situations:

- the employer is closing down the business altogether;
- the employer is closing down the business in the place where the employee is employed; or
- the employer no longer needs the employee's skills.

Note that Employee A may be dismissed as redundant even if the requirement for work that they were employed to do remains the same but Employee B's job has diminished or ceased and Employee B takes over Employee A's job. This is colloquially known as "bumping".

Procedure

As mentioned in 6.2 Employee Representative Bodies, where an employer is proposing to dismiss as redundant five or more employees at one establishment within a period of 90 days or less, the employer must consult about the dismissals all the persons who are appropriate representatives of any employees who may be affected by the proposed dismissals or by measures taken in connection with those dismissals. The consultation must begin at the earliest opportunity and, in any event, at least 60 days before the first of the dismissals takes effect.

The appropriate representatives of any affected employees are representatives of the trade union (if the employees are of a description in respect of which a trade union is recognised by their employer) or, in any other case, employee representatives chosen by the employees.

The consultation must include consultation about ways of:

- avoiding the dismissals;
- reducing the number of employees to be dismissed; and
- mitigating the consequences of the dismissals.

Further, the consultation must be undertaken by the employer with a view to reaching an agreement with the appropriate representatives.

In determining how many employees an employer is proposing to dismiss as redundant, no account shall be taken of employees in respect of whose proposed dismissals consultation has already begun.

For the purposes of the consultation, the employer must disclose in writing to the appropriate representatives and to the Director of Employment:

- the reasons for their proposals;
- the number and description of employees whom it is proposed to dismiss as redundant;
- the total number of employees of any such description employed by the employer at the establishment in question;
- the proposed method of selecting the employees who may be dismissed;
- the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are to take effect; and
- the proposed method of calculating the amount of any redundancy payments to be made (otherwise than in compliance with an obligation imposed by, or by virtue of, any enactment) to employees who may be dismissed.

The dismissal shall be regarded as unfair if the reason or principal reason for the dismissal of an employee was that they were redundant, but it is shown that the circumstances constituting the redundancy apply equally to one or more other employees in the same undertaking who hold positions similar to that held by the dismissed employee and who have not been dismissed by the employer and that either:

- the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that the employee had exercised – or had indicated an intention to exercise – certain rights (specifically indicated in Section 60 (2) and Section 62 of the Employment Act); or
- the employee was selected for dismissal in contravention of a customary arrangement or agreed procedure relating to redundancy and there were no special reasons justifying a departure from that arrangement or procedure in this case.

Compensation

Subject to certain specified exceptions, if an employee who has been continuously employed for two years is dismissed by reason of redundancy, they are entitled to a redundancy payment.

Where a person's employment is terminated by reason of redundancy, and provided that the total amount of the redundancy payment does not exceed the amount of one year of pay and that no payment will be made to an employee who has not completed one year of service, they shall be paid by their employer by way of compensation:

- for each of the first five completed years of service, two weeks of pay;
- for each of the next five completed years of service, three weeks of pay;
- for each additional completed year thereafter, four weeks of pay; and
- in respect of an employee age 41 years and over, for each completed year of service after the age of 40, two weeks of pay.

However, the foregoing shall not prevent redundancy settlements that are more favourable.

Compromise Agreements

A common way of terminating an employment relationship is to enter into a compromise contract. Effectively an employer will pay an employee an agreed sum of money in return for the employee not bringing or continuing any common law or statutory claims against the employer for any act of discrimination or harassment. For details of the conditions that must be met in order for the compromise agreement to be binding, please refer to **7.4 Termination Agreements**.

7.2 Notice Periods

Minimum statutory notice periods the employer must give vary depending on the employee's length of service. If the employee is paid monthly, notice periods are as follows:

- up to eight years' service – one month;
- between eight and ten years' service – two months; and
- more than ten years' service – three months.

If the employee is paid more often than monthly, notice periods are as follows:

- less than two years' service – one week;
- between two and five years' service – two weeks;
- between five and eight years' service – four weeks;
- between eight and ten years' service – eight weeks; and
- more than ten years' service – 13 weeks.

Employment contracts can provide for longer notice periods and for payment in lieu of notice.

Dismissal Without Notice and Breach of Contract Claims

Employees can be dismissed without notice in cases of gross misconduct. Otherwise, failure to provide appropriate notice will give rise to a claim for wrongful dismissal. Fixed-term employees who are dismissed before the expiry of their contract are entitled to 50% of the sum that would have accrued during the unexpired period of the contract.

The employer must file a Notice of Termination with the Department of Employment within seven days of the dismissal.

To avoid breach of contract claims, the employer must comply with any contractual obligations regarding termination. A fair process must be conducted to avoid claims for unfair dismissal. Although not a statutory requirement, the Employment Tribunal will consider the process followed by the employer.

Different considerations will apply in cases where dismissal is on the grounds of capability or redundancy.

7.3 Dismissal for (Serious) Cause

Generally speaking, an act of gross misconduct is considered to be serious enough to overturn the contract between employer and employee, thus justifying summary dismissal. It is still vital that the employer follows a fair procedure as for any disciplinary offence.

Failure to establish the facts before taking action and failure to hold a meeting with the employee, as well as denying the employee the right to appeal, are highly

likely to be considered unfair at an Employment Tribunal and lead to a claim against the employer.

7.4 Termination Agreements

The conditions regulating compromise contracts in respect of complaints presented to the Employment Tribunal for harassment or discrimination are set out in Section 62 (2) of the Equal Opportunities Act 2006. The conditions under Section 62 (2) are that:

- the contract must be in writing;
- the contract must relate to the particular complaint;
- the complainant must have received advice from a relevant independent adviser as to the terms and effect of the proposed contract and, in particular, its effect on their ability to pursue a legal complaint;
- when the adviser gives the advice, there must be in force a contract of insurance – or an indemnity provided for members of a profession or professional body – covering the risk of a claim by the complainant in respect of loss arising as a consequence of the advice;
- the contract must identify the adviser; and
- the contract must state that the conditions regulating compromise contracts under Section 62 (2) are satisfied.

A person is a relevant independent adviser for the purposes of Section 62 (2) if:

- they are a qualified lawyer (barrister or solicitor);
- they are an officer, official, employee or member of a trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union; or
- they work at an advice centre (whether as an employee or a volunteer) and have been certified in writing by the centre as competent to give advice in relation to employment and equal opportunities law and as authorised to do so on behalf of the centre.

A person is not a relevant independent adviser in relation to the complainant if:

- they are employed by – or is acting in the matter for – the other party or a person who is connected with the other party;
- in the case of a person within subsection (3)(b) or (c), the trade union or advice centre is the other party or a person who is connected with the other party; or
- in the case of a person within subsection (3)(c), the complainant makes a payment for the advice received from said person.

Any two persons are to be treated as connected if:

- one is a company of which the other (directly or indirectly) has control; or
- both are companies of which a third person (directly or indirectly) has control.

7.5 Protected Categories of Employee

It is unlawful to discriminate against employees on the basis of any protected characteristic under the Equal Opportunities Act 2006. The protected characteristics are as follows:

- gender;
- gender reassignment;
- marital or civil partnership status;
- racial and ethnic origin;
- pregnancy or maternity leave;
- age;
- disability;
- sexual orientation; and
- religious beliefs.

For details of the various forms discrimination may take, please refer to **8.2 Anti-Discrimination**.

8. Disputes

8.1 Wrongful Dismissal

Breach of a notice term, whether express or implied, and breach of a contractual disciplinary procedure are examples of grounds for a wrongful dismissal claim. The remedies available for wrongful dismissal are damages and equitable remedies (eg, a declaration). An injunction will only be granted if damages would be inadequate.

8.2 Anti-Discrimination

As mentioned in **7.5 Protected Categories of Employee**, legislation in Gibraltar (in particular, the Equal Opportunities Act 2006) forbids discrimination in the workplace on the basis of:

- age or age group;
- disability;
- pregnancy or maternity leave;
- racial or ethnic origin;
- religion or belief;
- sex (including marital or family status); or
- sexual orientation.

Discrimination may take the form of direct discrimination, indirect discrimination, harassment or victimisation. Almost all categories of workers are protected from discrimination including employees, contract workers, past employees or workers and those applying for jobs or in the process of going through recruitment procedures.

Any termination that can be shown to be due to a discriminatory reason will be unlawful.

There is no cap on awards for discrimination or harassment. A successful applicant may be awarded damages, including damages for injury to feelings.

8.3 Digitalisation

The majority of disputes between the employees and employers are brought before the Employment Tribunal and the proceedings are typically held in person. However, the Employment Tribunal has the discretion to implement videoconferencing facilities (if deemed appropriate).

9. Dispute Resolution

9.1 Litigation

Standard forms are available on the Department of Employment website and are required to be completed and sent to the Department of Employment in the event of a termination or a change to employment status. The Employment Tribunal Claim Form (the “Claim Form”) is also available on the Department of Employment website.

An employee may take a claim to the Employment Tribunal if they think someone has treated them unlawfully – for example, their employer, a potential employer or a trade union. Unlawful treatment can include:

- unfair dismissal;
- discrimination; and
- bullying at work.

Making a Claim

A claim has to be made to the Employment Tribunal within three months of employment terminating or of the act constituting the basis of the claim occurring. To make a claim, a Claim Form must be completed and submitted to the secretary of the Employment Tribunal. The Employment Tribunal secretary will send a copy of the Claim Form to the respondent and a blank Response Form for them to complete. The respondent then has an opportunity to file a response. The employee will receive a copy of the response.

Once the Employment Tribunal has accepted a Claim Form and any Response Form, it will appoint a mediator.

9.2 Alternative Dispute Resolution

Arbitration is possible if included in the employment contract. Pre-dispute arbitration agreements are enforceable.

9.3 Costs

The Employment Tribunal may – on its own initiative or on application – make a costs order or a preparation time order, where it considers that:

- a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part thereof) or the way that the proceedings (or part thereof) have been conducted; or
- any claim or response has no reasonable prospect of success.

The Employment Tribunal may also make a costs order or a preparation time order where a party has been in breach of any order or any of the Employment Tribunal (Constitution and Procedure) Rules or where a hearing has been adjourned or postponed on the application of or as a result of the conduct of a party.

GREECE

Law and Practice

Contributed by:

Nikolas Sigkridis, Semina Zavitsanou, Chrysa Kalantzi and Yannis Ragos
POTAMITISVEKRIS



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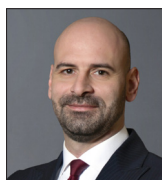
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POTAMITISVEKRIS and its employment team has been consistently recognised since 2010 as a top-tier firm in Greece. In 2024, four promising associates joined, making it the largest team in the country (currently consisting of one partner and eight associates). It covers all aspects of employment, social security and immigration law – both advisory and litigation. Clients value its deep legal knowledge, responsiveness and practical, business-friendly approach, which supports decision-making and fosters long-term partnerships. The team provides trusted advice

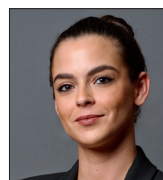
ers to leading companies across the banking, retail, telecoms, pharma, industry and mining sectors, as well as to the Hellenic Federation of Enterprises and the Ministry of Employment. It handles the most complex employment law matters, including litigation that helped form the rules of pension plan liquidation in cases of transfer of undertaking, termination of protected union executives and unfair dismissals, as well as collective negotiations at the sectorial level and all kinds of advisory and consultation.

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1. Employment Terms

1.1 Employee Status

Blue-Collar and White-Collar Workers

According to settled case law, white-collar workers are those who primarily perform mental work, whereas blue-collar workers are those who primarily perform manual work. Traditionally, this distinction was significant in Greek labour law, particularly with respect to the notice period for termination and the calculation of severance pay. However, as of 1 January 2022, this distinction has been abolished for the purposes of termination procedures and severance pay.

Other Statuses

Managerial employees

Within the meaning of law, they are not subject to the labour law provisions concerning the working time limits (eg, daily/weekly rest periods, overwork, overtime, work on Sundays and public holidays, etc) and statutory annual leave entitlements.

Part-time employees

Part-time employment may take the form of daily work with shorter working hours than the full-time schedule, non-daily work with full daily hours, or even non-daily work with shorter daily hours than the full-time schedule.

Seasonal employees

Their employment is directly linked to the seasonal nature of the employer's operations and typically lasts for the duration of the active season. In seasonally operating hotels (up to nine months per year), the employer must re-employ the same number of employees that were employed on average in the last two seasons, and preferably those who were employed in

the last season. Despite the fixed-term nature of their contracts, severance payment is required, in the case of termination (either during the season or off-season).

1.2 Employment Contracts

The employment contract may be concluded either for a fixed term or for an indefinite term. The determination of the contract's duration is of particular importance in relation to the manner in which it is terminated (see 7.1 Grounds for Termination). A fixed-term employment contract terminates automatically upon the expiry of the agreed duration, without the need for any declaration or other action by either party. In contrast, an indefinite-term contract is typically terminated by a unilateral declaration of intent made by either the employer or the employee and addressed to the other party.

An employment contract does not require written form for its validity, unless the written form is mandated by law (eg, in the case of part-time employment) or has been contractually agreed between the parties.

Employers are required to inform employees of the essential terms of the employment contract or relationship, as specified by law. These include:

- the place of work;
- the employee's position or job title, grade, category or sector of activity, and a brief description of the work;
- the start date of the employment contract or relationship;
- if the employment is for a fixed term, the end date or expected duration;
- the duration and terms of any agreed probationary period;

- the training provided by the employer, if applicable;
- the duration of annual paid leave, as well as how and when it is granted;
- the procedure to be followed by both employer and employee in the event of termination of the contract or employment relationship – particularly with respect to the obligation of written notice, any notice periods, severance pay entitlements, and whether there is a requirement for a justified reason;
- the remuneration of any kind to which the employee is entitled, including the frequency and method of payment;
- the working hours;
- the Collective Labour Agreement (CLA) that sets out the employee's minimum pay and working conditions, as well as the signatory parties to such agreement; and
- the social security institutions with which the employee is registered, and any other employer-provided social insurance benefits.

1.3 Working Hours

The *statutory working time* of an employee working full-time in Greece is 40 hours per week, allocated on a five or six-day basis. It has been clarified that when a five-day weekly work system is implemented the full working hours amount to eight hours per day, while when a six-day weekly work system is implemented the full working hours amount to six hours and 40 minutes per day.

Overwork from the 41st to 45th hour (five-day working schedule) and from the 41st to 48th hour (six-day working schedule) is paid with a 20% augment to the paid hourly wage.

Overtime (more than nine hours per day and 45 or 48 hours per week) is as follows.

- Legitimate overtime: up to 150 hours a year (and up to three hours per day). Each hour is paid with a 40% augment to the paid hourly wage; above the 150-hour limit, with prior permission from the competent body of the Ministry of Labour in urgent cases where the execution of certain work is absolutely necessary and cannot be postponed, each

hour is paid with a 60% augment to the paid hourly wage.

- Overtime for which the provisions of law have not been followed is paid with a 120% augment to the paid hourly wage (unlawful overtime).

As a rule, the offsetting of extended working hours on one day or week with reduced hours on another day or week is not permitted. Exceptionally, this is allowed if a *working time arrangement* is agreed upon. In such cases, variations in working hours (between periods of increased and reduced working hours) do not lead to additional payment for overwork and/or overtime, provided the average working time is maintained.

1.4 Compensation

Statutory Minimum Wage

The minimum wage in Greece is set by law and is periodically adjusted by the government.

As of 1 April 2025, the gross statutory minimum salary and wage for full-time employment across the country has been set as follows:

- for white-collar workers – the minimum monthly salary is set at EUR880; and
- for blue-collar workers – the minimum daily wage is set at EUR39.30.

Moreover, it is noted that for those workers who are paid with the statutory wage or salary the period of service – under an employment relationship – which has been spent with any employer and in any speciality before 14 February 2012 and after 1 January 2024 is recognised as seniority.

According to the above, seniority-based salary increments are set as follows:

- for white-collar workers – a 10% increment is granted for every three years of service and up to three three-yearly periods (ie, a maximum of 30% for nine or more years of service); and
- for blue-collar workers – a 5% increment is granted for every three years of service and up to six three-yearly periods (ie, a maximum of 30% for 18 or more years of service).

Statutory Allowances

Mandatory and separate from the base salary are the Christmas allowance (equivalent to up to 25 days' wages), the Easter allowance (equivalent to up to 15 days' wages) and the annual leave allowance (equivalent to up to 15 days' wages).

CLAs

Minimum wages (above the statutory levels) as well as additional allowances for various reasons (eg, marriage, family, seniority, unhealthy work, education, qualifications, etc) may also be set by collective labour agreements or arbitration decisions.

1.5 Other Employment Terms

Vacations and Vacation Pay

Employees in Greece are entitled to paid annual leave, which accrues based on their length of service:

- for the first (calendar) year of employment – the employee is entitled to two days of paid leave per month of employment (on the basis of a six-day workweek) or 1.66 days paid leave per month of employment (on the basis of a five-day workweek);
- for the second (calendar) year of employment – the employee is entitled to 2.08 days per month of employment (on the basis of a six-day workweek) or 1.75 days per month (on the basis of a five-day workweek);
- for the third (calendar) year of employment or more – (from January 1st of the year) the employee is entitled to 26 days per year (on the basis of a six-day workweek) or 22 days per year (on the basis of a five-day workweek); and
- employees who have completed ten years of service with the same employer or 12 years of total prior service (with any employer and under any type of employment relationship) are entitled to 30 working days of paid annual leave under a six-day workweek system, or 25 working days of paid annual leave under a five-day workweek system.

CLAs may provide for more favourable leave entitlements.

Required Leave

Under Greek labour law, employees are entitled to various statutory paid or unpaid leaves, including the following.

- Maternity leave: 17 weeks total (eight weeks pre-birth, nine weeks post-birth), with full wage subsidised by the Greek social security institution (e-EFKA) and employer top-up.
- Childcare leave, which can be granted either:
 - (a) as reduced working hours (one hour daily for 30 months);
 - (b) upon agreement with the employer, two hours daily for the first 12 months and one hour for the next six months; or
 - (c) upon agreement with the employer, as consecutive leave instead of reduced working hours.
- Special nine-month leave (when applicable). During this leave, the birth mother is entitled to receive statutory remuneration by the Greek Public Employment Service (DYPA).
- Paternity leave: 14 working days, fully paid.
- Parental leave: up to four months per parent, unpaid, for children up to eight years old. Two months are subsidised by the DYPA.
- Sick leave: sick leave is not specifically regulated in Greece. Typically, it is not a leave but a justified absence. The employee is entitled to receive the wages of one month, if they have been employed for one year, or the wages of half a month, if they have been employed more than ten days but for less than a year. The employer is entitled to deduct any amounts paid to the employee by e-EFKA.

Confidentiality and Non-Disparagement Clauses

Confidentiality obligations may be contractually imposed during and after employment. Non-disparagement clauses are not explicitly regulated in Greek law, but may be enforced if included in employment or settlement agreements – provided they are specific, balanced and proportional. Overly broad clauses could be deemed unenforceable under good faith and personal rights doctrines.

Employee Liability and Limitations

Employees are liable for damage caused to the employer through intent. In cases where damage results from negligence during the performance of

work duties, Greek courts may limit or even waive employee liability – especially in cases of slight negligence. Courts may apportion liability between the employee and employer, attributing to the employer the share of the loss that corresponds to normal business risk or that is disproportionate to the employee's benefit from the employment relationship.

2. Restrictive Covenants

2.1 Non-Competes

During the Course of Employment

An employer may not prohibit an employee from engaging in secondary employment outside their agreed working hours. Any contractual clause to the contrary is considered null and void, and therefore unenforceable, unless the restriction is objectively justified. Such objective justifications may include:

- health and safety concerns;
- the protection of business confidentiality;
- employment with a competitor; or
- the prevention of conflicts of interest.

As a result, although a general contractual ban on parallel employment is not permitted, it is acceptable to include clauses requiring the employee to inform the employer before undertaking any additional employment, especially where the employee has doubts as to whether objective grounds for restriction may apply. In any case:

- working time limits and rest periods must be observed; and
- the employee must not be subject to adverse treatment due to providing services to another employer outside their primary working hours.

Post-Employment Non-Compete Clause

During the employment relationship, the employer's claim for the employee to refrain from engaging in competitive activity stems from the employee's ancillary duty of loyalty. However, this duty does not survive the termination or expiry of the employment contract. Therefore, for the period following the end of the employment relationship, a corresponding obligation on the part of the employee must be expressly

agreed upon. Greek law does not explicitly regulate post-employment non-compete clauses.

However, Greek case law has developed specific criteria to assess the validity and enforceability of such clauses. If a legitimate business interest is established, courts then evaluate the clause based on transparency and clarity regarding its scope and conditions. The main factors considered include the following.

- Duration of the restriction: the restriction should be time-limited, typically up to 12 months, or in some exceptional cases up to 24 months.
- Geographical scope: the clause should not be overly broad and should be reasonable in its territorial coverage – usually within the Greek territory.
- The scope of activities and types/categories of enterprises considered competitive: the clause should specify which businesses and activities are restricted.
- Financial compensation: a fair consideration must be provided by the employer, usually in connection with the duration of the restriction and the monthly remuneration paid during employment. This compensation may be paid after the restriction period ends, provided the employee complied with the clause. The agreement may also include a penalty clause in case of breach.

2.2 Non-Solicits

Non-solicitation clauses are contractual provisions designed to prevent former employees from approaching or encouraging colleagues or clients to leave the company or transfer their business elsewhere. Their primary purpose is to protect the employer's workforce stability and business relationships, following the termination of an employment relationship.

These clauses are not explicitly regulated by Greek law. However, Greek case law has developed criteria for assessing their validity. In general, the same conditions that govern post-termination non-compete clauses also apply to non-solicitation clauses. Such clauses must be narrowly tailored and intended to protect the employer's legitimate interest. The main factors examined by Greek courts include the following.

- Duration of the restriction: the restriction should be time-limited (a period of six to 12 months is usually seen as reasonable).
- Scope of the restriction: the clause should not be overly broad and should apply only to employees or clients with whom the individual had direct professional interaction or was aware of a potential professional relationship. Also, it should not disguise a non-compete clause.
- Nature of the restriction: courts assess whether the clause prohibits active solicitation (which can be restricted) or mere acceptance of employment applications or client requests.
- Proportionality and clarity: the term must be clearly defined and proportionate in relation to the legitimate interest being protected. Often, client lists may be considered part of the employer's confidential information or business know-how.
- Penalty clauses: may be used to reinforce compliance, provided they are reasonable and proportionate to the breach.

Financial compensation is not required for the non-solicitation obligation to be valid and enforceable.

3. Data Privacy

3.1 Data Privacy Law and Employment

In the employment sphere, the collection and overall processing of employee data is governed by the General Data Protection Regulation (GDPR) and supplemented by Law 4624/2019. This law outlines specific provisions for processing employee data, including identifying a valid legal basis, handling sensitive data, and ensuring transparency in all data-processing activities.

The Hellenic Data Protection Authority (HDPa) plays a crucial role in issuing decisions and guidelines that further clarify these requirements, ensuring that employers understand their obligations and their rights. Key points from the HDPa decisions and guidelines highlight the need to implement the necessity, proportionality and transparency principles of employee-monitoring practices, and the adoption of clear and detailed policies with a special focus on the implementation of a compliant Acceptable Use Policy

where the details of the employer's right to employee monitoring are delineated.

In addition, emphasis is given to the implementation of robust data security measures, and the respect for data subject rights such as access, rectification and erasure. Employers must also adhere to clear data retention policies, ensuring that employee data is not kept longer than necessary and is disposed of securely when no longer needed. Importantly, consent is generally not considered a valid legal basis for processing employee data due to the inherent power imbalance in employment relationships, making it essential for employers to rely on other legal bases such as legitimate interest or contractual necessity.

Overall, compliance with these regulations is crucial to avoid significant penalties, requiring employers to stay informed about legal developments and HDPa guidance to ensure that they are meeting their legal obligations and protecting employee privacy effectively.

4. Foreign Workers

4.1 Limitations on Foreign Workers

EU Citizens

EU citizens are eligible to live and work in Greece without obtaining a work or residence permit. They can enter Greece with a valid identity card or passport, regardless of the planned duration of their stay. If the EU citizen intends to stay in Greece for more than 90 days, they must register at the local Department of Aliens of the Hellenic Police.

Third-Country Nationals

For third-country nationals (ie, non-EU citizens) there are quite strict and cumbersome criteria regulating the lawful residence and work of non-EU citizens in Greece. In particular, Greek law provides for a closed number of residence permits that may be issued only for limited and very specific purposes, on the basis of a *numerus clausus* approach.

4.2 Registration Requirements for Foreign Workers

EU Citizen Card

If the EU citizen intends to stay in Greece for more than 90 days, they must register at the local Department of Aliens of the Hellenic Police (physical presence is required). Furthermore, the issuance of a Greek Tax Number and a Greek Social Security Number is required for the hiring of the EU citizen (this also applies to all third-country nationals who are employed by a Greek company).

Third-Country Nationals

Law 5038/2023 provides for specific types of residence permit for work purposes. The main ones are the following (please note that all foreign documents should bear apostille stamps, in cases where the country/authority of issuance is a party to the Hague Convention – otherwise, the documents need to be notarised and then certified by the competent Greek Consulate).

Residence permit for the provision of work (metaklisi)

Act of Ministerial Council No 56/2024, as in force, provides for the relevant positions that may be filled by third-country nationals for the provision of work in Greece, for 2025. The relevant position should be both mentioned in the aforementioned Act and vacant. If the relevant position is included in the aforementioned Act and vacant:

- the employer should digitally file an application and the relevant supportive documents to the competent Directorate for Foreign Citizens and Migration of the Decentralised Administration;
- following the filing, a decision by such competent authority is issued, which approves the provision of work to the specific employer; and
- subsequently, the relevant documentation is forwarded to the competent Consulate.

An interview of the third-country national follows, in order for a visa to be issued. Following the issuance of the visa, the third-country national should digitally file the relevant documentation to the competent Directorate for Foreign Citizens and Migration of the Decentralised Administration to be provided with a

filing certificate (this stands as a residence and work permit until the issuance of the final residence permit, which is issued following review of the documentation and a biometrics appointment).

Residence permit for high-rank executives

The aforementioned Act also provides for the high-rank positions that may be filled for 2025. A high-rank executive should submit a pre-approval application to the Ministry of Migration and Asylum, along with supportive documents – ie:

- a high-rank employment contract for at least six months, duly signed by the company's legal representative and providing for annual remuneration of at least EUR32,000;
- official evidence of specialised qualifications (either education degrees in a field similar to the job position (duration of studies of at least three academic years) or employer certificates proving at least five years of experience at a similar position), and an employer's tax declaration proving at least gross annual revenue of at least EUR60,000 per high-rank employee, etc.

Following the pre-approval, they should visit the competent Consulate for issuance of a visa, and then enter Greece to digitally file a residence permit application – alternatively, they should digitally file a residence permit application with the required supportive documents if they have already been in Greece for less than 90 days.

Intra-Corporate Transfer (ICT)

The third-country national should digitally submit a pre-approval application to the Ministry of Migration and Asylum, along with (inter alia) the following.

- Proof that the third-country business and the business in Greece belong to the same group of companies.
- Certificates from the Chamber of Commerce (Greek and foreign) for the last three months for both companies.
- The statute of the Greek company.
- The employment contract of the employee with the third-country company along with a letter of assignment detailing:

- (a) the duration of the transfer;
- (b) the location of the Greek company;
- (c) the job description;
- (d) the salary;
- (e) the working conditions;
- (f) proof that after the completion of the ICT the employee will move to a company within the same group;
- (g) proof of employment with the parent company for at least 12 months; and
- (h) educational degrees in a field similar to the job position (duration of studies of at least three academic years) or proof of five-year work experience at a similar position.

Following the issuance of the pre-approval, the file will be sent to the competent Consulate (based on the employee's country of residence) and a visa appointment will be scheduled. Following issuance of the visa, an application is filed digitally for the issuance of the ICT permit.

5. New Work

5.1 Mobile Work

Definition of Remote Work

According to the applicable legal framework, remote work is defined as the provision of work performed remotely using technology, which could otherwise be carried out at the employer's premises. Remote work may be agreed under a full-time, part-time, rotational or other form of employment.

Remote Work Agreement

Remote work should be mutually agreed between the employer and the employee, either at the time of hiring or by amending the employment agreement. The parties are also free to agree on a hybrid work model. Implementing a remote work policy is common practice in the Greek labour market to cover specific terms of remote working.

In specific cases (eg, protection of public health, employee health issues, parents of children up to 12 years old, and caregivers), remote work may be unilaterally implemented by either the employer's decision

(in the first case) or upon the employee's request (in other cases).

Cost of Remote Work

The cost of remote work is borne by the employer and must not be lower than the minimum amounts stipulated by the respective ministerial decision per month, as follows:

- EUR13 for the use of the employee's residence as a workplace;
- EUR10 for telecommunications costs; and
- EUR5 for the maintenance of work equipment.

Nevertheless, the employer has the option to cover telecommunications costs by paying them directly to the service provider and/or providing the employee with the work equipment, thereby avoiding the corresponding monetary compensation. Furthermore, if the employee works remotely for fewer than 22 days in a given month, the compensation is proportionally reduced.

Working Time in Remote Work

Remote work does not affect the employee's work schedule as declared to the Labour Authority. However, for now, remote workers are excluded from the use of the digital work card, which is being gradually implemented across all sectors of Greek labour market.

Remote workers have the right to disconnect and are not required to engage in work-related communications (eg, emails, phone calls, messages) outside working hours. They are also protected from any form of retaliation for exercising this right.

Health and Safety

The employer is obliged to inform the employee of all applicable company policies and procedures regarding health and safety. Conversely, the employee is required to comply with these procedures and all relevant health and safety legislation. Although the general rule assigns responsibility for employee safety to the employer, in the case of remote work, due to the employer's limited ability to adequately inspect the workplace, it is presumed that the remote workplace meets the minimum health and safety requirements.

A ministerial decision is expected to be published regulating specific health and safety requirements in relation to remote work.

Data Protection

Remote work does not alter data protection obligations. The GDPR, Greek Law 4624/2019 and relevant decisions, guidelines and other acts issued by the Hellenic Data Protection Authority (HDPa) shall apply. Decision No 32/2021, Guidelines No 2/2020 on Measures for Security in the Context of Remote Work, and Guidelines No 1/2021 on the Application of Personal Data Protection Rules in the Context of Remote Work have been issued by the HDPa, providing general guidelines specifically for remote work.

Regarding assessment of employee performance, the use of webcams for this purpose is prohibited.

Social Security Contributions

Remote workers are insured for both main and supplementary pensions in the same manner as employees who work on the employer's premises, without any differentiation.

5.2 Sabbaticals

Sabbatical leave is not provided for under Greek labour legislation. However, it is recognised in the leave policies of many companies, particularly multinational ones.

Under applicable Greek legislation, unpaid leave of absence for a period of up to one year may be granted by written agreement between the employer and employee. This period of time can be extended by a new agreement between the parties. During this leave, the employment relationship is suspended by law, and the employer is not required to pay social security contributions. The time spent on unpaid leave is considered service time for the purposes of rights and obligations under the employment agreement. Upon the conclusion of the unpaid leave, the employee has the right to return to their last position.

The employer is obligated to submit the mutually signed unpaid leave agreement to the ERGANI information system of the Ministry of Labour, as well as to the public social security institution, e-EFKA.

5.3 Other New Manifestations

Law 4808/2021 introduced a dedicated regulatory framework for platform-based work in Greece, aligning with European standards and addressing emerging forms of employment.

Although the platform and the service provider could be connected either by an employment agreement or a services agreement, the contract is presumed to be a services agreement if the services provider cumulatively has the following rights based on the contract:

- the right to use subcontractors or substitutes to provide the services he/she has undertaken to offer;
- the right to choose the various projects that the digital platform proposes for him/her to undertake, or to unilaterally set the maximum number of such projects that he/she will undertake at any given time, which may change, provided that it is always determined unilaterally by him/her;
- the right to be employed or provide services to other platforms, including rivalries of the contracting platform; and
- the right to determine his/her provision of working time of services.

Self-employed service providers have the right to form trade unions, engage in collective bargaining, and conclude sui generis collective agreements. It is worth mentioning that the first collective agreement in Greece's digital platform sector was recently signed between a leading digital platform and a union of self-employed couriers. This pioneering arrangement may serve as a model for future self-regulatory efforts between platforms and their partners, laying solid foundations for the further institutionalisation of the gig economy in Greece.

Digital platforms – regardless of the nature of the agreement between them and the services providers – have the same health and safety obligations as if they were their personnel.

6. Collective Relations

6.1 Unions

Trade union freedom – the right to establish and operate trade union organisations for the protection and advancement of workers’ interests – is enshrined in Article 23 of the Greek Constitution. Trade unions serve as the primary institutions for the professional, economic and social protection of their members.

Core Roles of Trade Unions

Trade unions fulfil the following core roles:

- engage in collective bargaining to influence wages, benefits and working conditions;
- negotiate CLAs;
- declare and co-ordinate strikes;
- participate in consultation and information procedures with employers on collective dismissals, business transfers, technological changes, health and safety, and internal work regulations; and
- represent their members in administrative (eg, Labour Inspectorate) and judicial forums.

Establishment of Trade Unions

To establish a trade union, at least 20 employees are required as founding members. These individuals must have completed at least two months of employment within the enterprise, sector or profession, depending on the type of union being formed.

The establishment process includes a judicial review of legality and is finalised with the registration of the union in the General Register of Trade Union Organisations (GEMISOE).

Organisational Structure of Trade Unions

The Greek union system has three levels:

- primary unions (individual employees, enterprise-level, sectoral or occupational);
- secondary organisations (federations and labour centres uniting primary unions); and
- tertiary confederations (national bodies such as GSEE for private-sector employees and ADEDY for public-sector employees).

6.2 Employee Representative Bodies

In addition to trade unions, Greek labour law recognises other collective workers’ representative bodies. They are not as widespread and generally play a supplementary role (especially when a trade union is present), and include the following.

Workers’ Council

Establishment

These are compulsory in enterprises with at least 50 employees (and, in the absence of a trade union, at least 20 employees).

Composition

They consist of three, five or seven members (depending on the size of the enterprise), which are elected every two years. Members enjoy the same protection from dismissal afforded to trade union officials.

Nature

They are participatory and consultative bodies aimed at improving workers’ conditions in conjunction with the enterprise’s development. They can co-decide with the employer on specific matters. They also have information rights and, in the absence of trade unions in the enterprise, consultation rights.

Health and Safety Committees

Establishment

These are compulsory in enterprises with at least 50 employees, and have the right to elect health and safety employee representatives in smaller businesses (depending on the size of the enterprise).

Composition

They consist of two to seven members (depending on the size of the enterprise), which are elected every two years. Members enjoy the same protection from dismissal afforded to trade union officials.

Nature

They are consultative bodies that promote and safeguard the right of employees to health and safety in the enterprise.

Rights

They examine working conditions within the enterprise, propose improving measures, and monitor

compliance with health and safety regulations. Finally, they have information rights.

European Works Councils

They aim to ensure the effective exercise of employees' rights to information and consultation in EU-scale companies or groups of undertakings. They hold the right to information and consultation (but not co-decision-making), with the company or group.

6.3 Collective Bargaining Agreements

CLAs traditionally regulate the employment relationship between employers and employees under subordinate employment contracts. Although the possibility for economically subordinate self-employed workers to conclude CLAs was introduced in the 1990s, no such CLA has been concluded to date. More recently, Law 4808/2021, which governs platform-based work, explicitly provided for freelancers in the gig economy to conclude collective agreements. A landmark development was the 2025 collective agreement between Wolt and the Union of Self-Employed Delivery Workers of Thessaloniki – the first of its kind to cover digital platform delivery workers in Greece.

Types of CLAs

Depending on their scope and the level at which they are concluded, these include the following.

Enterprise-level CLAs

These are agreements negotiated within a single company and apply to all its employees, regardless of role or position. These agreements are typically negotiated between the employer and enterprise trade unions and are tailored to reflect the company's financial and operational realities.

Occupational CLAs

These apply to employees in the same profession, regardless of which company employs them. These agreements promote professional solidarity and aim to protect the shared interests of workers with similar qualifications. Depending on the agreement, their territorial scope can be national, regional or local.

Sectoral CLAs

These cover employees working in similar or related industries and may also apply nationally or regionally.

These agreements are often multi-occupational and play a key role in shaping collective labour standards while supporting broader economic stability.

National General Collective Labour Agreement (NGCLA)

This applies across the country to all employees in terms of non-wage working conditions. In terms of wages, however, it only binds employers who are members of the employer associations that signed the agreement (for all others, the statutory minimum wage applies). The NGCLA sets general standards and acts as a reference point for preserving social cohesion and minimum working conditions nationwide.

Binding Effect and Extension Mechanism

Occupational and sectoral CLAs bind only those employers and employees who are members of the signatory organisations. However, under certain circumstances, the Minister of Labour and Social Affairs has the authority to declare such agreements generally binding. In that case, the CLA applies universally within the relevant sector or profession – even to non-members. The CLAs in the hospitality and food service sectors are among those most commonly declared universally binding by ministerial decision.

Duration, Expiry and *Metenergeia* (After-Effect Period)

CLAs usually have a duration of one to three years and expire either after the agreed period or termination. When a CLA expires, its regulatory provisions (ie, those affecting employment conditions) continue to apply for a grace period of three months – or six months in the case of the NGCLA. After this period, certain core terms remain in force under the doctrine of *metenergeia*. These include the basic salary or daily wage, as well as allowances for seniority, children, education and hazardous work – provided they were part of the previous agreement. All other terms cease to apply.

Negotiation and Dispute Resolution

CLAs are the result of collective bargaining between employer and employee representatives. If negotiations break down, employees may resort to strikes. Both parties also have the option of engaging in mediation, and, if necessary, arbitration. In specific cases,

legislation allows for unilateral recourse to arbitration to resolve deadlocks in essential sectors.

7. Termination

7.1 Grounds for Termination

The termination of an employment relationship in Greece differs in the case of a fixed-term agreement and in the case of an agreement of indefinite duration.

Termination of a Fixed-Term Employment Contract

A fixed-term employment contract is terminated de facto once the agreed time lapses and no payment of a termination indemnity is required. In addition, a fixed-term contract may also be terminated before the agreed time lapses for a serious cause (see 7.3 Dismissal for (Serious) Cause). In such case, severance pay is also not required. However, if the employer terminates the contract early without a serious cause, the employee is entitled to claim the full salary payments they would have received for the entire duration originally agreed upon.

Termination of an Employment Contract of Indefinite Duration

The termination of an employment contract of indefinite duration is a unilateral, non-causative (ie, the employer is not required to indicate the reasons justifying the dismissal) legal act, except for those cases stipulated otherwise by law (see 7.5 Protected Categories of Employee).

Furthermore, the termination of an employment agreement of indefinite duration is valid only if it is made in writing and upon simultaneous payment of the exact amount of the statutory (and of the contractual, if any) severance pay (see 7.2 Notice Periods). The only case where the employer is not obliged to pay the statutory severance pay is when the employee has committed a criminal offence and the employer has filed criminal charges against the employee before termination.

Collective Redundancies

Employers intending to implement collective dismissals must engage in prior consultation with employee representatives and notify the Ministry of Labour. This

applies when, within a 30-day period, an employer intends to dismiss:

- more than six employees in undertakings employing 20–150 employees; or
- more than 5% of the workforce, and at least 30 employees, in undertakings employing more than 150 employees.

The employer must present the reasons, consider alternatives and explore mitigation measures. The process is supervised by the Supreme Labour Council (SLC) and cannot be finalised without completion of the mandatory procedures.

7.2 Notice Periods

Dismissal Formalities

To terminate an employment agreement of indefinite duration, the employer must log into the ERGANI digital platform using their username and password, complete the electronic termination form (“document E6”), print it and have it signed by the legally authorised representative on behalf of the employer. For expiry or early termination of a fixed-term employment contract, the respective form (“document E7”) is used.

The termination document is handed to the employee and signed by them, and is then submitted to the ERGANI platform within four days of the termination date.

If the employee refuses to sign it, the termination document must be served by a bailiff.

On the termination date of an indefinite-term contract, the employer must deposit the statutory severance pay into the dismissed employee’s bank account.

Calculation of the Severance Payment

Statutory severance payment is calculated based on the employee’s last (before the termination) monthly salary (annualised) and their years of service with the same employer.

The monthly salary is multiplied by 14 and divided by 12 (to include the Christmas and Easter allowances as well as the annual leave allowance). Regular fringe benefits (such as car allowance, housing allowance,

mobile phone and insurance coverage, etc) are included if they are granted regularly and without any disclaimer by the employer about their voluntary nature. However, the monthly salary used for the calculation is capped at the equivalent of eight times the daily wage of an unskilled worker (currently EUR39.30), multiplied by 30 days (currently EUR9,432).

Based on the above, the statutory severance payments are calculated as follows (years rounded up and all monthly salaries annualised), for years of service and the applicable severance payment as follows.

- One year to four years: two months' salary.
- Four years to six years: three months' salary.
- Six years to eight years: four months' salary.
- Eight years to ten years: five months' salary.
- Ten years: six months' salary.
- 11 years: seven months' salary.
- 12 years: eight months' salary.
- 13 years: nine months' salary.
- 14 years: ten months' salary.
- 15 years: 11 months' salary.
- 16 years or more: 12 months' salary.

Employees who on 12 November 2012 had completed 17 or more years of service with the same employer are entitled to an additional severance payment. This is calculated as one (annualised) monthly salary for each completed year of service on that date, up to a maximum of 12 months. For the purpose of this additional severance, the monthly salary is capped at EUR2,000.

Notice Period

The length of the notice period depends on the employee's service, for years of service at the same company and the applicable notice period as follows.

- One (completed) to two: one month.
- Two (completed) to five: two months.
- Five (completed) to ten: three months.
- Ten (completed) and more: four months.

The employer is not obliged to observe the notice period. However, if the employer opts for termination with prior notice, the statutory severance pay is reduced by 50%.

The notice period that the employee must give when resigning is half the length of the notice period required from the employer, as outlined above.

Garden Leave

Upon giving notice of termination, the employer may unilaterally release the employee from the obligation to perform work, either fully or partially, for the duration of the notice period (garden leave). In such case, the employer remains obliged to pay the employee's full salary until the expiry of the notice period, without being considered in default for not utilising the employee's services during that time. Furthermore, the law expressly permits the employee to engage in employment with another employer during this period. This does not affect the validity of the termination nor the employee's entitlement to statutory severance pay.

7.3 Dismissal for (Serious) Cause

In Greece, the employer is not required to indicate the reasons justifying the dismissal. Of course, in the case of litigation a reason has to be presented before the court (see 8.1 **Wrongful Dismissal**).

If a serious cause is required for the termination (eg, termination of a fixed-term agreement, if the invocation of serious cause is mutually agreed or in the case of protected categories of employees), it can be personal (eg, the employee's poor performance or negligence, breach of contractual obligation, erosion of confidence towards the employee) or economic/technical (eg, restructuring/downsizing due to economic reasons).

7.4 Termination Agreements

The employer may agree with the employee on the mutual termination of the employment agreement, including the employee's waiver of any right to challenge the validity of the termination, and settlement of any claim of any kind arising from the employment agreement. In practice, the successful termination agreement requires the payment of enhanced severance payment. Although this option may seem more costly, this is by far the safest, easiest and fastest way (and in the end possibly the least costly), considering the elimination of the litigation risk for an employer having to drastically reduce its workforce.

7.5 Protected Categories of Employee Maternity and Paternity Protection

Dismissal is prohibited during pregnancy and for 18 months after childbirth, during pregnancy or child-birth-related illness, and for fathers for six months after the child's birth, unless a serious cause exists.

Employee Representatives

Specific categories of employee representatives benefit from special protection regarding dismissal during their tenure and for one year afterwards.

Employees Hired by Virtue of Mandatory Legal Provisions

Companies of more than 50 employees may be required by State order to hire people with disabilities who have limited access to employment due to life-long health problems and other categories (such as children of victims of war or the children of members of the National Resistance). Employment agreements governed by these legal provisions are terminated only following a decision of the National Unemployment Authority or following an application filed by the employer to the relevant State Committee on the grounds of the employee's serious misconduct. The Committee will then render a mandatory decision ratifying or rejecting such demand for permission to terminate the employment agreement.

- pregnancy or recent childbirth (or if the employee is the father of a newborn), unless there is a serious cause for dismissal;
- reaction to the employee's request for family leave or a flexible working arrangement for childcare purposes, including remote work;
- during paid annual leave;
- obligatory employment under Law 2643/1998;
- during military service;
- failure to comply with legal provisions on collective dismissals;
- dismissal of a protected unionist, unless there is a serious reason;
- dismissal due to lawful trade union activity;
- dismissal resulting from the employee's refusal to accept the employer's proposal for part-time work or job rotation;
- collective refusal by employees of a working time arrangement, provided this refusal does not violate good faith; and
- dismissal due to the employee's exercise of the right to disconnect in the case of remote work.

According to settled case law, dismissal is a last resort (*ultima ratio*) and lawful only if no less harsh alternatives (eg, warning, reassignment) are available. The employer must prove that all milder measures were exhausted. Choosing termination when milder, equally effective options exist may be seen as an abuse of rights.

8. Disputes

8.1 Wrongful Dismissal

The grounds for nullity of the termination of an employment contract of indefinite duration, as codified in the law, are as follows:

- discrimination based on gender, race, skin colour, political ideology, religious or philosophical beliefs, ancestral or national origin, sexual orientation, age, gender identity or characteristics, disability, or participation in a trade union;
- reaction to the lawful exercise of employee rights;
- reaction to a lawful complaint made by the employee;
- reaction to the exercise of employee rights in cases involving violence or harassment in the workplace;

Wrongful Dismissal Based on One of the Grounds for Nullity Stipulated by Law

The dismissed employee may initiate legal proceedings (file a lawsuit) within three months of their dismissal seeking:

- a judicial declaration that the dismissal is invalid;
- payment of outstanding wages (plus statutory interest accrued from the date of termination);
- compensation for moral damages; and
- potentially, reinstatement.

If the dismissed employee presents facts that reasonably indicate that the dismissal was based on one of the prohibited grounds set out by law, the burden of proof shifts to the employer. The employer must then demonstrate that the termination was not due to the

alleged unlawful grounds, but was based on a legitimate reason (eg, poor job performance, misconduct, breach of trust, reorganisation, etc).

If the court finds that the alleged ground for nullity of the dismissal is substantiated, it will:

- uphold the employee's claim;
- declare the dismissal null and void;
- order the payment of outstanding wages and, potentially, compensation for moral damages; and
- require the employer to reinstate the employee.

Wrongful Dismissal for Reasons Other Than Those Stipulated by Law

If the court finds that the dismissal is wrongful for reasons not related to the specific grounds of nullity set by law (eg, in cases of abusive termination due to failure to exhaust milder measures before termination), then, rather than applying any other consequence, the court may, upon request by either the employer or the employee, award the employee an additional severance pay. This additional amount may not be less than three months' regular salary nor may it exceed twice the amount of statutory severance pay.

8.2 Anti-Discrimination

Under the applicable legal framework, any direct or indirect discrimination in the workplace on the grounds of race, colour, national or ethnic origin, ancestry, religious or other beliefs, disability or chronic illness, age, family or social status, sexual orientation, gender identity or gender characteristics is strictly prohibited.

Any person who suffers discrimination may file a complaint through the company's internal policy against violence and harassment (applicable to companies with more than 20 employees), or directly to the Labour Inspectorate or the ombudsman. Alternatively, they may file a lawsuit before the competent court.

Dismissal due to discrimination for one of the aforementioned reasons is null and void. The dismissed employee may choose to either:

- request reinstatement to their position and claim back-pay (wages) from the time of dismissal until the court's decision; or

- seek additional severance compensation, along with legal interest, moral damages and reimbursement of legal expenses.

8.3 Digitalisation

There has been no progress in the digitalisation of employment disputes before the court or Labour Inspectorate, as hearings remain in person and require legal representation.

However, the introduction of the digital work card, which records employees' start and end times in real-time to the Ministry of Labour's database, marks a major step in Greece's labour market digitalisation. Aimed at combating undeclared work, it is gradually expanding across all sectors.

The digital work card also enhances evidence in labour disputes. Employers must retain records for at least ten years, while employees can access their own data. Claims on working hours are subject to a five-year limitation, making these records key proof in such disputes.

9. Dispute Resolution

9.1 Litigation

Greek courts handle employment-related disputes and issues. In courts, parties must be represented by lawyers.

Furthermore, the Labour Inspectorate is an administrative body responsible for monitoring compliance with labour laws, investigating complaints and imposing sanctions for violations.

For collective labour disputes, the Organisation for Mediation and Arbitration (OMED) provides mediation and arbitration services to resolve conflicts between employers and employees or trade unions.

9.2 Alternative Dispute Resolution Individual Labour Disputes

These refer to disputes between an individual employee and their employer. Arbitration is generally not common or preferred for resolving individual employment disputes in Greece. Mediation may apply to employ-

ment disputes. Prior to initiating court proceedings, the legal representative (attorney) must inform their client in writing about the possibility of resolving the dispute or part of it through mediation.

Collective Labour Disputes

These involve employers and collective bodies (eg, trade unions) and concern broader employment terms such as wages, working time or collective agreements. Arbitration is formally recognised and regulated for collective disputes via the OMED. Arbitration may be initiated:

- by mutual consent of both parties; or
- unilaterally, in limited cases, if mediation fails and the dispute affects public interest.

The arbitration decision is binding for the parties and has the same legal effect as a collective labour agreement.

Conciliation

This is a voluntary process aimed at resolving an individual or collective labour dispute through facilitated dialogue. It is typically carried out as follows:

- for individual disputes – before the Labour Inspectorate (SEPE); and
- for collective disputes – via the Ministry of Labour or OMED.

9.3 Costs

In the vast majority of cases, Greek courts award the prevailing party a reasonable amount of legal costs, which is often significantly lower than the expenses actually incurred, including attorney's fees. Courts frequently order that legal costs be set off between the parties when they find that the interpretation of the relevant legal provisions was particularly complex or unclear. The final amount awarded is ultimately at the discretion of the court.

Trends and Developments

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Machas & Partners is rewriting the model for a full-service law firm in Greece, and serves its clients locally according to international standards and in compliance with the sector's globally acknowledged best practices. The firm focuses on serving both corporate and private clients in the broad spectrum of their legal affairs. Corporate clients are provided with specialised advisory and expert representation, while private clients benefit from extensive experience in handling complex disputes, as well as from the firm's

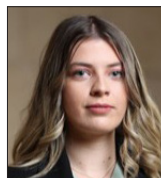
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In Greece, labour law has evolved dynamically, in response to historical, political and economic shifts. It has transitioned from a common and civil law-based system to a modern, multilayered regulatory framework. Today, in the post-memorandum era, following a long period of significant changes that have profoundly affected labour relations, labour law seeks to adapt to new socio-economic and technological challenges without compromising its core mission – namely, the protection of human labour and the improvement of the working environment. The following are several noteworthy legislative provisions that have contributed to the digital organisation of working time, enhanced labour flexibility, and fostered the principles of equality and equal treatment, proportionality and transparency.

Provisions on Remote Work (Teleworking)

In Greece, teleworking was introduced as a special form of employment by Law 2639/1998. Under Law 3846/2010, the European Framework Agreement for Telework of 16 July 2002 was incorporated into national law and established the general framework for its operation. In the wake of the COVID-19 pandemic and the serious issues that have arisen in the workplace, teleworking has emerged as a particularly useful tool for both the employee and the employer. The working conditions that arose due to the spread of COVID-19 made it necessary to specify how teleworking should operate, with further legislative adjustments, particularly regarding the costs it entails for the employee and the preservation and protection of the employee's rights. These issues were regulated by Article 67 of Law 4808/2021, which provided the following definition of teleworking: the provision of dependent work remotely using technology, under any type of employment contract (full-time, part-time, rotational or other forms of employment), which can be provided from the employer's premises.

Teleworking is typically implemented through an explicit written agreement between the employer and the employee, either at the time of hiring or during the employment relationship, by means of an amendment to the original employment contract. Given that such an agreement constitutes a material term of employment that is binding on both parties, it is essential that the employer's right to revoke telework

or amend its terms (eg, transition to a hybrid system or telecommuting) be clearly stated in writing to avoid any unforeseen unilateral changes to the employment terms.

Telework may not be unilaterally imposed, except in specific circumstances relating to health and safety (Article 67 of Law 4808/2021) or as a protective measure against workplace violence or harassment, where telework is deemed necessary to safeguard the employee's physical and mental health (Article 19 (3) of Law 4808/2021).

In terms of working conditions, teleworkers benefit from the same rights guaranteed by applicable legislation and the collective agreements applicable to comparable workers within the company's premises, regarding:

- workload;
- assessment criteria and procedures;
- rewards;
- access to information concerning the company;
- training and professional development;
- trade union membership;
- trade union activity; and
- unimpeded and confidential communication with trade union representatives.

In teleworking, the concept of “working time” takes on a different meaning from that of conventional work. Unlike the standard workplace in the company, where it is easy to ascertain the employee's exact working time, in teleworking there is no certain way of knowing whether the teleworker has worked their normal working hours, whether they have worked on Sundays, bank holidays or evenings, or even whether they have worked overtime. Because of these complications, the employment contract should contain explicit reference to the time limits of telework and the conditions under which telework is to be provided, and it should be made clear to the worker that they have the right to disconnect after the end of working hours. When monitoring teleworkers' compliance with the terms and conditions of employment, the employer must respect the teleworker's privacy and exercise control in a manner consistent with the protection of personal data.

Right to disconnect

The most significant reform introduced by Article 67 (10) of Law 4808/2021 is the establishment of the right to disconnect. This refers to the employee's right to disengage after working hours, during legally established leave or justified absences, meaning that they are not obliged to communicate digitally and respond to phone calls, emails or any form of communication. Any discrimination against a teleworker for having exercised the right to disconnect is prohibited. The technical and organisational means to ensure that the teleworker is disconnected from digital communication and work tools constitute mandatory terms of the telework contract and are to be agreed between the employer and the representatives of the workers in the company or undertaking. Where there is no agreement, the above terms are determined by the employer and notified by it to all employees.

Teleworking costs

Pursuant to Article 67 (4) of Law 4808/2021, the employer is obliged to cover the costs incurred from teleworking, including:

- the cost of equipment, unless it is agreed that the employee will use their own equipment;
- telecommunication expenses;
- technical support;
- maintenance of equipment and repair of damages (including damages to the employee's personal devices, unless otherwise agreed in the employment contract); and
- the cost of using home space.

In particular, Ministerial Decision No 98490/02.12.2021 sets the minimum monthly compensation for teleworking as follows:

- EUR13 for the use of home space;
- EUR10 for telecommunication costs (internet/phone), unless the employer covers these directly through a separate contract with the relevant service provider (mobile or landline); and
- EUR5 for equipment maintenance, unless the equipment is provided and maintained by the employer.

If teleworking is performed for fewer than 22 days per month, the employer pays 1/22 of each cost per actual teleworking day, excluding days on which the employee did not telework.

Health and safety

The employer must inform the teleworker of the company's policy on health and safety at work, including:

- the specifications of the teleworking area;
- the rules for the use of visual display screens;
- taking breaks;
- the organisational and technical resources for the provision of teleworking; and
- any other necessary information.

The teleworker is required to comply with legislation on health and safety at work and to not exceed their working hours. When a teleworker works remotely, it is presumed that the telework area complies with the above specifications and that the teleworker complies with the health and safety rules.

Notification of teleworking terms (within eight days)

From the commencement of teleworking, the employer is required to inform the employee of the minimum content and conditions governing telework. Notification may be provided by any appropriate means, including email. In practice, this is typically done either individually through the employee's contract, or collectively via posting on the corporate intranet or through distribution of the company's teleworking policy.

The following information must be communicated to the employees:

- the right to disconnect;
- an itemised breakdown of additional teleworking costs and the method of reimbursement;
- the equipment provided, the scope of technical support, and any usage restrictions or penalties for breach of conditions;
- if on-call telework availability is agreed, the applicable availability hours and expected response times;

- health and safety rules applicable to the home workspace, including the procedure for reporting work-related accidents; and
- the obligation to protect professional and personal data, as well as the procedures required to ensure data protection compliance.

Prevention and Combating of Violence and Harassment in the Workplace

The imperative to shape a work environment centred on the safeguarding of human dignity led Greece to ratify ILO Convention No 190 through Law 4808/2021, thereby providing “a broader and enhanced protection of the personality and dignity of the employee against all forms of violence and harassment”.

The subjective and objective scope of application of this law may be characterised as particularly broad. It extends protection to workers in both the private and public sector, regardless of the employment relationship, including those engaged under contracts for services, independent services, salaried mandates, and employees through third-party service providers, as well as for trainees, apprentices, interns and volunteers (among others).

A similar expansion applies to the objective scope, as the law covers harassing behaviour that may occur in any location or circumstance connected to work, including during work-related travel or work communications.

In terms of content, the concept of harassment encompasses a wide spectrum of unacceptable behaviours and practices in the workplace, including but not limited to mobbing, stalking, cyberstalking, sexual harassment and any form of physical, psychological, verbal or non-verbal violence or mistreatment in the world of work.

Specific rights

Specifically, the law establishes the following rights for affected persons.

The right to submit a complaint within the company (Article 10 of Law 4808/2021)

This is in accordance with the complaint submission and management procedure that every employer is obliged to adopt.

The right to appeal to the Labour Inspectorate and the ombudsman

This is in addition to any legal protection chosen by the affected party, and in accordance with Law 3896/2010 and Law 4443/2016 on equal treatment.

The right to leave the workplace

Any affected person, if they reasonably believe that there is an imminent serious risk to their life, health or safety, has the right to leave the workplace for a reasonable period of time without loss of pay or other adverse consequences, subject to prior written notification to the employer, indicating the violence and harassment incident and the circumstances that justify such belief. However, once the risk has ceased to exist and if the affected person refuses to return to the workplace, the employer may refer the matter to the Labour Inspectorate to request a resolution of the dispute.

Specific obligations

Accordingly, the legislation establishes specific obligations for employers to prevent and address violence and harassment in the workplace (Articles 5–11 of Law 4808/2021) – namely, as follows.

Zero-tolerance policy

Employers must demonstrate a zero-tolerance stance towards violence and harassment. In this context, they are required to implement concrete measures to prevent and respond to such incidents, such as:

- training and awareness programmes for staff and management on respect, dignity, and conflict management;
- regular assessment and review of the effectiveness of prevention mechanisms;
- establishment of an internal procedure for handling complaints;
- respecting the principles of impartiality and confidentiality; and

- informing employees about the potential risks of violence and harassment in the workplace, the applicable legal framework and available protection mechanisms.

Development of a preventative action plan and improvement of working conditions

This should include a focus on the evaluation of psychosocial risks or harassment-related hazards.

Enhanced role of the occupational physician

This person is granted new responsibilities beyond those stipulated in Law 3850/2010, including:

- providing advice on the prevention, resolution and management of incidents of violence and harassment; and
- offering direct support to victims.

Mandatory policies for companies with more than 20 employees

These include:

- a policy for the prevention and combating of violence and harassment; and
- a policy for the handling of internal complaints.

In addition to the obligation to draw up the aforementioned policies, companies that employ 70 or more people and that are required to have a work regulation are obliged to incorporate the aforementioned policies into the work regulation. These policies may be a negotiable subject for the drafting of a Collective Agreement. Moreover, the Internal Work Regulations must explicitly include provisions on disciplinary offences, disciplinary proceedings and sanctions in the context of or following complaints about incidents of violence and harassment at work. Regarding the content requirements of the policies, the following should be noted.

Concerning the prevention and combating of violence and harassment, the policy should:

- include the risks associated with violence and harassment, and specific risks faced by particular categories of workers, such as night-shift workers and newly recruited employees;

- include preventative and response measures, such as fostering respect and co-operation, open communication, open incident-reporting processes, employee training, installation of technical safety systems, and guidance for victims of violence – regular evaluation of the effectiveness of measures is required;
- provide for information and awareness-raising activities for staff, with training seminars and counselling;
- inform employees of their rights and provide easy access to the details of the relevant competent authorities; and
- designate a “reporting person” who acts as a responsible liaison to guide and inform employees on issues related to violence and harassment.

Concerning the handling of internal complaints, the policy should include:

- secure communication channels – easily accessible ways to make complaints and clearly designate responsible parties within the company to receive and investigate them;
- impartial investigation and data protection – ensuring confidentiality and prompt action to protect those affected, with access to the information necessary to establish the facts;
- prohibition of retaliation – the company’s commitment to protect the aggrieved person from retaliation;
- consequences of violations – provisions for sanctions, such as position changes or even termination of the offender’s employment, to prevent a recurrence of similar incidents; and
- co-operation with competent public authorities – the company is obliged to provide information and co-operate fully with the authorities if requested.

Implementation of the Digital Work Card

Article 74 of Law 4808/2021 established the legal framework for the digital organisation of working time and the implementation of the digital work card. Specifically, under the delegated ministerial decisions, Greek employers’ businesses were gradually obligated to join the digital card mechanism by operating an electronic system for recording the working time of their employees working under a contract of depend-

ent employment. The digital card system is directly connected and interoperable with the “ERGANI II” Information System in real-time, while the actual working time is recorded through the digital work card.

The following sectors are already covered by the mechanism:

- banks with more than 250 employees;
- supermarkets with more than 250 employees;
- insurance providers;
- security and protection service providers;
- public utility companies;
- the industrial sector;
- retail trade;
- tourism; and
- catering services.

In addition, from 26 June 2025 until 3 November 2025 (date of mandatory inclusion) businesses engaged primarily in the following sectors have been included in the system on a pilot basis:

- the supply of electricity, natural gas, steam and air conditioning;
- wholesale and retail trade, and the repair of motor vehicles and motorcycles;
- financial and insurance activities; and
- administrative and support service activities.

The practical importance of this process is that by marking the digital work card the start and end of the daily working hours, work breaks, any excess of the legal working hours, etc, are proven in real-time in the “ERGANI II” system, so that in the event of a discrepancy between the actual employment and the relevant marking on the card – which can be established after a relevant on-site inspection by the Labour Inspectorate – sanctions may be imposed in the form of administrative fines for each case of non-compliance. If it is found that an enterprise has not activated the system, despite being subject to the obligation, an administrative fine of EUR10,500 per employee for whom the digital work card has not been activated is imposed.

It is noted that the proper implementation of this system has considered all the specific features of labour relations, in such a way as to not disrupt the

proper functioning of enterprises. Thus, according to an explicit legal provision, the compulsory recording of working time applies only to employees physically present on the employer’s premises.

Therefore, the following are excluded from the application of the digital card.

- Executive personnel – ie, employees in supervisory or managerial positions – who are exempted because of their position from the working time limits (see also the Washington International Convention No 1 of 1919, ratified in Greece by Law 2269/1920). Although such employees must be registered within the digital working time organisation, they are not required to declare working hours or to use the digital work card to register start and end times.
- Employees working remotely (teleworkers), although the employer remains obliged to register their working time digitally in the “ERGANI II” system. It is noted that employees who work under a mixed system (telecommuting) are not required to mark the digital card only for the days they work remotely.
- Employees without a fixed workplace, such as pharmaceutical sales representatives, travelling salespersons, technicians, drivers, employees visiting their employer’s clients, for the days they perform work outside the employer’s premises. Travelling salespersons (for example), given that they are predominantly employed outside the employer’s premises, are required to carry a copy of their employment contract as well as a copy of the staff list (Form E4).
- Employees working for third-party service providers or contractors are not required to use the digital work card when they perform work on the premises of a client company.
- Agricultural workers, fishermen and workers engaged in construction activities.
- Lawyers with a fixed salary.

An important feature is the express provision for the use of the digital card by loaned employees – ie, by employees working under a loan agreement, whereby they are subject to the same compliance obligations as the staff of the undertaking user. Accordingly, if the

undertaking user is subject to the digital work card system based on its primary business activity, the loaned employees are also required to use the digital work card.

Flexible employee arrival times

For businesses that are integrated into the digital work card system and have activated its use, a flexible attendance of up to 120 minutes may be granted, upon written agreement between employer and employee (typically reflected in a contractual clause), starting from the declared start of working hours in the digital organisation of working time and onwards. Through this possibility, the obligation for companies to amend the digital working hours of employees is eliminated if their arrival is after the declared starting time but within the agreed flexible attendance period.

Option to choose a reporting system for recording schedule changes

From 1 July 2024, businesses that have activated the digital card, beyond the possibility of selecting the pre-announcement system (ie, pre-declaring changes or modifications to the organisation of working time, or overtime work), now have the option of selecting a reporting system, provided that the digital card is marked at the start and end of the working day. Each enterprise, up to the last day of the current month, declares its selected system for the upcoming period via the “Digital Declaration of a Pre-Announcement or Reporting System for Recording Working Schedule Changes, Working Time Organisation and Overtime”. The selected period may not be shorter than one calendar month.

Arrangement of Working Time

Working time management is a modern way of organising work, which aims at flexibility and adapting working hours to the needs of the company and the employee. This concept differs from the traditional units of measurement of working time, such as the day and the week, and introduces broader reference periods, such as the month or the year. The arrangement does not increase total working time, but allows increased hours worked in one period to be offset against reduced hours in another, while keeping the average number of hours worked constant.

It is a tool that serves the overall valuation of work, without affecting the employee’s remuneration, provided that the average working hours are respected. The basic principle of the arrangement is the possibility of defining periods of increased and reduced working time, with offsetting of working hours within the reference period. The working time may not exceed 40 hours per week on average, and, for enterprises with shorter weekly working hours, this shorter working time shall apply.

The arrangement of working time occurs in two basic types, as follows.

- Arrangement with reference periods shorter than one year: in this case, the period of increased and reduced working hours must not exceed six months within a calendar year. The two periods are freely determined, provided that the total working hours can be balanced within the six-month period.
- Arrangement with a yearly reference period: the period of increased work may last up to 32 weeks (ie, approximately eight months), while the remaining time of the year is used for reduced work. The maximum allowable overtime under this system is 256 hours per year.

Implementation of the arrangement is subject to the following substantive conditions:

- maximum daily working time – during the period of increased work, working hours may not exceed ten hours per day (two additional hours beyond the standard eight-hour shift);
- mandatory rest – employees must be granted at least 11 consecutive hours of daily rest and at least 24 consecutive hours of weekly rest; and
- collective or individual agreement – if there is no trade union or collective agreement between the union and the employer, the working time arrangement system may be implemented upon written individual agreement between the employer and the employee.

It should be noted that the arrangement of working time must not affect the employee’s rights. In the event of termination of employment before the end of the reference period, the employee is entitled to

compensation for any surplus hours worked that have not been offset.

Additionally, Law 4808/2021 provides that an employee may be employed on a ten-hour work week on a four-day week basis, instead of an eight-hour work week on a five-day week basis. This arrangement allows for the same total weekly hours, with one additional rest day. Initially, this system required a written request by the employee – ie, it was implemented solely at the employee's initiative. However, Article 28 of Law 5053/2023 amended this provision, allowing such arrangement to be agreed upon either collectively or individually, through a written agreement between employer and employee, without it needing to originate by the employee's initiative. Thus, the employer may now propose the arrangement, and the employee may be asked to consent.

Conclusion

The labour regulations discussed in this article demonstrate that Greece is entering a new era of redefining the standards of work which it aims to adopt as a European democracy and society. The objective is therefore to build a modern labour market in which monitoring mechanisms are strengthened and a culture of respect for labour rights is actively promoted.

INDIA

Law and Practice

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after employment practices in the country, and has advised several clients (domestic and international) from sectors such as information technology/security, mining, healthcare, construction, automobiles and management consultancy. The ELB group is known for its bespoke advice and assistance on critical issues and strategy on employee transition/workforce restructuring, employee transfers on account of business/asset transfers, trade union-related issues and more. Notable clients include Hindustan Unilever, FirstRand Bank and HDFC Limited.

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1. Employment Terms

1.1 Employee Status

There are two main kinds of classification of employees: one based on the nature of work, and another based on the duration of employment.

Classification Based on Nature of Work

Depending on the predominant nature of their responsibilities, an employee may be classified as:

- a workman, as defined in the Industrial Disputes Act 1947 (the “ID Act”); or
- a managerial employee.

To determine whether an employee is a “workman”, the actual or primary work performed by the employee is examined. Some cases wherein the courts have considered the functions of an employee as being of a managerial nature are looking at the progress of work vis-à-vis quality and timeliness, ensuring compliance, manpower planning, contract management, monitoring costs, mentoring team members, and involvement in policy-making decisions regarding any aspect of the business or service, the conditions of workers/employees and other such similar powers.

The significance of this classification is that persons qualifying as “workmen” are entitled to various statutory protections/entitlements, such as severance compensation and notice (or the payment of a fixed salary in lieu thereof) in cases of termination of employment for reasons other than the employee’s misconduct,

and prior notice in case of any adverse change in the conditions of service.

Classification Based on Duration of Work

An employee could be either a permanent employee or a fixed-term employee, depending on the duration of work. For fixed-term employees, the duration is predetermined and limited, often tied to specific project requirements. For permanent employees, the employment relationship continues until one of the parties terminates it.

The significance of this classification is that there are certain benefits which are linked to the tenure completed by an employee in an organisation (such as gratuity, which is a statutory benefit received by an outgoing employee who has completed five years of continuous service). Accordingly, fixed-term employees may not be entitled to such benefits if the tenure of their employment is shorter (which is commonly the case). However, the stipulations set out by the central government and certain states under the Industrial Employment (Standing Orders) Act 1946 (the “IESO Act”, which applies to large establishments typically engaged in manufacturing operations) allow pro-rated statutory benefits under applicable laws for fixed-term employees in the workmen category, even if they do not fulfil the minimum service period for qualifying criterion.

Other Classifications

Other than the above broad classifications, there may be other kinds of classification for very limited purposes. For instance, under the social security regime

(namely the Employees' Provident Funds and Miscellaneous Provisions Act 1952), the manner of contributions by employers and employees varies depending on whether an employee is a domestic employee (an employee working in India and holding an Indian passport) or an international worker (an expatriate employee).

1.2 Employment Contracts

In India, employment contracts can be definite (fixed-term) or indefinite (permanent), depending on the purpose/duration of the relationship envisaged by the parties. The distinction between the two kinds of employment is explained in **1.1 Employee Status**.

An employer-employee relationship can either be express or implied, written or verbal. However, to avoid any dispute regarding the terms of employment, it is a common practice to execute an employment contract. Only a few Indian states, such as Karnataka and Delhi, require a commercial establishment (a non-manufacturing establishment) to issue written appointment letters to employees, which would set out basic particulars such as wages, job designation, the nature of their duties, etc.

Certain terms that are generally incorporated in an employment contract include:

- nature of work (job description);
- place of employment;
- date of commencement of employment;
- remuneration structure;
- assignment of intellectual property by the employee to the employer;
- cessation of employment (including notice period); and
- restrictive covenants (such as non-solicitation).

However, the Indian courts have taken the view that certain terms and conditions of service which are regulated by statute will constitute implied terms of a contract of employment. Therefore, provisions relating to payment of wages, bonuses, gratuity payments and contributions towards employees' provident funds and employees' state insurance can be considered to be implied terms of a contract of employment and need not be recorded in writing. Similarly, an employ-

ee's duty to remain faithful in their duties towards the employer and to maintain the confidentiality of the employer's proprietary information is considered to be implicit in the employment contract.

1.3 Working Hours

The working hours are primarily governed by the Factories Act 1948 (the "Factories Act") for manufacturing establishments, and by state-specific shops and establishments statutes (the "S&E Acts") for non-manufacturing commercial establishments. For some specialised sectors, working hours are governed by special statutes, such as the Mines Act 1952 for mines, and the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act 1996 for construction work.

The applicable laws provide normal working hours, which range mostly from eight to nine hours a day and are typically set at 48 hours a week. Any additional time spent by the employee towards work is subject to an overtime payment, which is twice the ordinary wages payable to the employee. Some statutes also provide weekly/quarterly limits to the number of overtime hours an employee may be required to work. Flexible working arrangements are possible, subject to adherence to the above-discussed statutory limits. It may be noted that several laws dealing with work time regulations exempt managerial employees from their purview; for such employees, the work time requirements are contractually driven.

The labour laws in India recognise both full-time and part-time employment. Part-time employees are ordinarily entitled to all benefits given to permanent employees. Having said that, there may be some restrictions on part-time employees, to which employers must be privy. For instance, the S&E Acts applicable to Maharashtra and Gujarat provide that part-time workers cannot be allowed to work more than five hours in a day.

1.4 Compensation Minimum Wages

The minimum wage requirements are governed according to various periodic central government and state notifications under the Minimum Wages Act

1948, which determine minimum wage rates for three major categories of workers:

- unskilled;
- semi-skilled; and
- skilled.

Statutory Bonus

The Payment of Bonus Act 1965 regulates the amount of statutory bonus payable to employees (earning wages not more than INR21,000 per month) employed in certain establishments based on their profits. The law applies to every establishment employing 20 or more persons and sets out provisions relating to the payment of the minimum bonus (8.33% of the salary, capped at INR7,000 or statutory minimum wages, whichever is higher), and the maximum bonus (20% of the salary, capped at INR7,000 or statutory minimum wages, whichever is higher).

Government Intervention in Compensation

Other than the above-mentioned requirements and certain other stipulations around the time and mode of the payment of wages, as well as permissible deductions from wages, there is typically minimal intervention by the government in terms of the determination of compensation and increments. These aspects are contractually driven but may be impacted by the presence of a unionised workforce and any collective bargaining agreements entered into by them or their representatives.

1.5 Other Employment Terms

Leave and Holiday Entitlements

The working conditions of employees, including their leave entitlements, are mostly regulated according to the nature of the entity by which they are employed.

If the entity is a factory (engaged in manufacturing activity) covered under the Factories Act, employees who have worked in the factory for 240 days or more in a calendar year must be allowed, in the subsequent calendar year, privilege leave with wages at the rate of one day for every 20 days of work performed (for adults). This leave is additional to public holidays to which workers are entitled.

If the entity is a shop or a commercial establishment, the number of days of privilege leave to which employees are entitled would depend on the state-specific S&E Acts (depending on the location of the establishment). The minimum threshold usually ranges from 12 to 20 days. This leave is pro-rated for the first year of employment. In several states, employees are also entitled to casual leave (that is, leave to attend to personal needs) and sick leave.

At the time of separation, an employee is also entitled to a fixed salary for accrued but unused privilege leave, up to the maximum accrual limits set out under the Factories Act or the state-specific S&E Acts (unless the employer contractually provides more beneficial terms).

Note that there may be special laws in addition to the above that deal with leave entitlements for special kinds of workforces. For instance, the Sales Promotion Employees (Conditions of Service) Act 1976 deals with leave entitlements for employees engaged in sales activities in notified sectors, such as the pharmaceutical industry.

Maternity Benefit

As per the Maternity Benefit Act 1961 (the “MB Act”), every woman who has completed 80 days’ service with the employer is entitled to paid maternity leave of 26 weeks. However, women with two or more surviving children are entitled to 12 weeks of paid maternity leave. Commissioning mothers and adoptive mothers are also entitled to paid maternity leave. Other kinds of paid leave envisaged under the law are in respect of special situations such as miscarriage, medical termination of pregnancy, tubectomy operations, etc.

Confidentiality and Non-Disparagement

There are no standard laws regarding confidentiality and non-disparagement, but it is standard practice to include these provisions in the appointment letter/employment agreement. Note that these obligations are typically continued even after the cessation of employment. The employee can be held liable under the law of contract if there is a violation of such stipulations.

2. Restrictive Covenants

2.1 Non-Competes

Validity

The Indian Contract Act 1872 stipulates that an agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind is, to that extent, void. A restrictive covenant, such as a non-compete, extending beyond the term of service is void, irrespective of the reasonability of such restriction, except in cases involving the sale of goodwill.

There is, however, case law recognising an exception to the rule covering restrictions aimed at protecting the employer's legitimate business interests, such as its business connections and trade secrets. Therefore, clauses relating to post-employment non-solicitation of employees or customers and the protection of confidentiality with respect to trade secrets are not caught by the above restrictions and have been enforced by the courts, albeit on a case-by-case basis.

Enforcement

For a breach of a restrictive covenant (being a breach of contract), the remedies discussed in the following points are available to an employer in such cases, to the extent the covenant is valid and enforceable.

Where a breach has occurred but the employer has not suffered a loss, and the contract provides a pre-estimate of the loss (in the form of liquidated damages) that might be incurred due to breach of contract, the party may claim said amount (to the extent the court determines it to be a genuine pre-estimate of the loss), irrespective of any actual loss arising on this account.

However, where the contract does not provide for such pre-estimate and the breach has occurred (as is usually the case with employment contracts), courts would typically grant an injunction restraining the former employee from continuing the breach.

Where a breach has occurred and the employer has suffered an actual loss, the employer can claim unliquidated damages for the loss caused to it which the parties knew would be caused as a result of the

breach, regardless of whether or not the employer has stipulated a pre-estimate of the loss in the contract.

2.2 Non-Solicits

As mentioned in **2.1 Non-Competes**, covenants with respect to non-solicitation and non-disclosure of confidential information may be enforced post-cessation of employment on a case-by-case basis, depending on the impact of the restriction on the ability of an individual to exercise lawful pursuits.

In the case of *Desiccant Rotors International Private Limited v Bappaditya Sarkar and Another* [CS (OS) Number 337/2008], the Delhi High Court noted the following: "Clearly, in part at least, the obligation agreement sought to restrain defendant number 1 from seeking employment with an employer dealing in competitive business with the plaintiff after he had ceased to be an employee of the plaintiff, and that too for a period of two years. Such an act cannot be allowed in view of the crystal-clear law laid on this issue. However, in the impugned order dated 20 February 2008, the injunction restraining defendant number 1 is limited in scope, in the sense that it does not restrain defendant number 1 from working with defendant number 2 or any other person/company, thereby steering clear of impinging the former's freedom to choose his own workplace. The injunction only restrains defendant number 1 from approaching the plaintiff's suppliers and customers for soliciting business which is in direct competition with the business of the plaintiff. Hence, the injunction which has already been granted by order dated 20 February 2008, is made absolute."

3. Data Privacy

3.1 Data Privacy Law and Employment

At present, the limited provisions on the protection of information are set out under the Information Technology Act 2000 and the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011 (the "SPDI Rules") framed thereunder. The SPDI Rules protect individuals (whether employees or otherwise) from an entity obtaining access or using their sensitive personal data or information (SPDI). The term

“sensitive personal data or information” is defined in the SPDI Rules to mean personal information which consists of information relating to:

- passwords;
- physical, physiological and mental health conditions;
- financial information, such as bank account details;
- sexual orientation;
- medical records; and
- biometric information.

If the requested information falls within the purview of the SPDI Rules, consent from the employee would be required before the data is collected. Typically, such consent is taken at the commencement of employment itself (through a consent clause in the employment contract/company policy); even so, it is advisable for employers to procure consent at the time of the collection and/or transfer of such protected information, so that an employee has an effective opportunity to withdraw consent, which is an opportunity that must be given to the employee under the SPDI Rules.

Employers are also required to implement reasonable security practices and procedures in relation to the storage of SPDI.

It should be noted that India recently enacted the Digital Personal Data Protection Act 2023 (the “DPDP Act”). The DPDP Act received the assent of the President of India on 11 August 2023, although the provisions therein state that it would come into force on such date as the central government would notify. The DPDP Act widens the ambit of the data protection regime in India by not only covering SPDI but also including within its purview any data about an individual who is identifiable by such data. The DPDP Act provides that a person (which would include an employer) may process the personal data of a data principal (who would be an employee in the context of an employer-employee relationship) for a lawful purpose for which the data principal has given their consent, or for certain “legitimate uses” (where express consent would not be needed). The expression “legitimate uses” includes purposes associated with employment, and measures to secure the interests of the employer.

4. Foreign Workers

4.1 Limitations on Foreign Workers

Indian labour laws do not prescribe any limitations in respect of the engagement of foreign workers by Indian establishments. However, there are certain additional compliance requirements from a social security standpoint that an employer will have to undertake, such as making employees’ provident fund contributions if the foreign worker qualifies as a non-exempt “international worker” under the Employees’ Provident Funds Scheme 1952.

However, in a significant development, the Karnataka High Court in *Stone Hill Education Foundation v Union of India & Others* [W.P. No. 18486/2012] held that the provisions of the EPF Scheme that required different treatment of Indian employees working abroad and foreign employees working in India were discriminatory and violative of Article 14 of the Constitution of India. The court struck down the differential treatment regarding social security contributions for these two classes of workers. Following this decision, the Employees’ Provident Fund Organisation (EPFO) has acknowledged the ruling and is currently evaluating its next steps. These may include seeking a review or appeal before the Supreme Court of India. Until a conclusive decision is reached or further clarification is issued by the EPFO or the courts, the judgment introduces a degree of legal uncertainty regarding the continued enforceability of the existing contribution requirements for foreign nationals classified as international workers.

With respect to Overseas Citizens of India (OCI) specifically, in 2021 the Ministry of Home Affairs of the Government of India prescribed various conditions/requirements to be fulfilled by OCI cardholders before being engaged as an employee of an Indian entity. Primarily, all OCI cardholders are now permitted lifelong multiple entries to India for any purpose. However, OCI cardholders will have to seek special permission from a specified competent authority – the Foreigners Regional Registration Office (FRRO) or the relevant Indian mission – to be engaged as research scholars, in journalistic activities, or as interns or employees in foreign diplomatic missions/foreign government organisations in India (which is a special category).

For OCI cardholders who are employed by an Indian entity to render services apart from the work falling within the ambit of the special category, there is no requirement to seek prior permission from any competent authority or FRRO.

Depending on the duration of a foreign employee's stay in India and the nature of services proposed to be rendered, they will also have to comply with the applicable immigration laws for obtaining the appropriate visa (ie, a business/employment visa) to enter India.

4.2 Registration Requirements for Foreign Workers

Foreign nationals entering India on an employment visa which is valid for more than 180 days are required to register themselves with the FRRO within 14 days of their arrival in India. No such registration is required if the employment visa is valid for 180 days or less.

Furthermore, all OCI cardholders residing in India (including those rendering services apart from those in the special category) are required to notify the FRRO by email of any change in their permanent residential address or occupation (this is not a registration requirement per se).

5. New Work

5.1 Mobile Work

In 2022, the government of India amended the Special Economic Zones Rules 2006 in relation to work from home arrangements for employees working out of Special Economic Zones (SEZs). A company in an SEZ may allow certain employees to work from home or from any place outside the SEZ, and needs to notify this to the Development Commissioner through an email on or before the date on which such work from home is permitted. The unit can provide an employee working from home duty-free goods, such as a laptop, a desktop and other electronic equipment, and these goods shall be allowed to be taken outside the SEZ without the payment of duty, subject to such goods being duly accounted for in the appropriate records.

Apart from the above, Indian laws in their current form do not regulate and/or resolve issues that may

arise out of employees working remotely. Most Indian labour and employment legislation is silent on the work from home/hybrid concept, and does not provide any specific guidelines that may regulate the employer-employee relationship in such scenario. Accordingly, the onus is on employers to determine and notify employees of the guidelines in relation to working remotely.

Employers continue to be liable for the health and safety of their employees when working remotely and should ensure that employees take relevant measures to ensure that their remote workplace is ergonomically sound, clean, safe and free of obstructions and hazardous materials, and does not pose a risk to their health and safety. Employers should also require their employees to comply with all building/social codes and health and safety requirements as may be applicable to employees. Employers may also be required to pay compensation to employees who are injured (which includes partial or permanent disability) or die due to accidents arising out of or in the course of their employment, whether working remotely or otherwise.

Indian data privacy laws and social security laws are central pieces of legislation and do not vary from state to state. Accordingly, there would be no change in the employers' or employees' obligations in this respect on account of working remotely.

5.2 Sabbaticals

Sabbatical leave is not statutorily governed under Indian labour laws. Organisations consider and allow employees to avail themselves of sabbatical leaves at their discretion and according to mutually agreed terms and conditions. Typically, sabbatical arrangements are unpaid and would envisage the complete absence of any pecuniary relationship between the employer and the employee. Since no salary is paid to the employee during this period, no statutory social security contributions have to be made. However, employees may continue to be eligible for any other contractually agreed or policy-driven benefits like insurance coverage during the sabbatical period.

5.3 Other New Manifestations

With remote and flexible workplaces becoming the new norm, employers have adopted (and continue to

adopt) new practices to ensure the seamless flow of work. Hybrid workplaces that offer flexibility to employees to work from both the office and home have now become a standard requirement for most job seekers. To reduce real estate costs, many companies have switched to “co-working” spaces and “hot-desking” practices. Furthermore, with most companies having resumed working from the office (while retaining the hybrid model), employers have been making efforts to take care of the wellbeing of their employees, in order to help them to adjust to this shift. Factors contributing to employees’ ailments have included the stress of additional commuting hours, the expensive cost of living, managing new methods of work, and physical health issues.

6. Collective Relations

6.1 Unions

In India, the Trade Unions Act 1926 provides for the registration of trade unions (which is an optional process for a trade union); such registration confers on the union certain rights and liabilities which a non-registered trade union does not have. For example, a non-managerial employee who is a party to an industrial dispute can be represented by a registered trade union. Furthermore, a registered trade union can acquire and hold movable and immovable property and can contract, sue and be sued in its name.

At the state level, however, a few states have made provisions for the recognition of a trade union; for instance, Maharashtra has enacted the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act 1971, which sets out a procedure that may be followed by a registered trade union to obtain the status of a recognised trade union. Where a state government has not enacted legislation for the recognition of a trade union, an employer may accord its recognition to a union by way of a collective bargaining agreement.

A trade union that is both registered and recognised has the right to collective bargaining with an employer, so that if the employer refuses to negotiate with such union on the terms and conditions of employment of the workers being represented, the union can file a

claim before the competent authority alleging unfair labour practices by the employer.

6.2 Employee Representative Bodies

In addition to trade unions, the ID Act provides for the constitution of a works committee in an establishment with 100 or more non-managerial employees, in the event that the relevant government issues any specific or general directions to that effect. Such works committees have an equal right of representation of non-managerial employees’ representatives and employers’ representatives, and the right to discuss the terms and conditions of employment of non-managerial employees in an amicable manner.

6.3 Collective Bargaining Agreements

In India, collective bargaining agreements are primarily the product of a charter of demands and several rounds of negotiations between a particular employer and its employees, who are typically members of a trade union. Collective bargaining agreements are a predominant feature of employment in the manufacturing sector, although the existence of such agreements in the services sector is not uncommon. Collective bargaining agreements can only establish better employment conditions than those prescribed under various employment and labour laws, and therefore these instruments cannot be used to opt out of statutory payments, benefits and protections. Collective bargaining agreements typically entail provisions relating to working hours, working conditions (such as health and safety), remuneration (including bonus and yearly increments), leave and holiday entitlements, etc.

For more details in relation to collective bargaining, please see **6.1 Unions**.

7. Termination

7.1 Grounds for Termination

In India, an employer may terminate the services of an employee on two main grounds, either with or without cause.

Termination Without Cause

Employment can be terminated at the employer's discretion for any reason other than proven misconduct by simply invoking the notice period provisions in the employment agreement/applicable law/policies. Such termination could be on account of:

- an employee's unsatisfactory performance;
- redundancy of the role/downsizing/closure of the establishment;
- frequent absence from work due to continued ill health, etc.

Termination without cause (or termination simpliciter) includes scenarios wherein there may be underlying reasons for the separation but the employer, as per its assessment of such reasons or cause, does not intend to or does not deem it appropriate to:

- mention or assign such reasons for the separation in the exit documentation; and/or
- deprive the employee of any contractual or statutory benefit pursuant to their exit.

The employee will be entitled to all service benefits (statutory as well as contractual) that have been earned up to the date of the cessation of employment. Non-managerial employees who have rendered at least 240 days of service will be entitled to notice of at least one month (or salary in lieu thereof) and statutory severance compensation (computed at 15 days' wages for every year of completed service or part thereof in excess of six months) ("Retrenchment Compensation"). In cases of collective redundancies involving non-managerial employees, as per the ID Act, employers will also have to comply with the "last in, first out" principle.

Termination With Cause

This includes the termination of employment for breaches of the terms and conditions of employment, misconduct, etc. Termination on account of misconduct should be preceded by a domestic inquiry conducted in accordance with the principles of natural justice (ie, the employee should be given a fair opportunity to present their case and defend themselves against the charges levelled). In cases of termination on the grounds of misconduct, the employee would

not be entitled to receive notice pay or any other statutory and contractual payments, except gratuity (with necessary adjustments for losses due to misconduct, if any) and leave encashment.

7.2 Notice Periods

The concept of "at will" employment (or hire and fire policy) is not recognised in India. Employers are required to comply with notice period requirements (or pay salary in lieu of notice) as per applicable laws/employment agreements and policies (whichever is higher) in case of termination of an employee's services for any reason other than proven misconduct. The ID Act and state-specific S&E Acts prescribe a minimum notice period of one month in the event of termination simpliciter. While the ID Act and most S&E Acts only apply to non-managerial employees, certain S&E Acts (such as those of Haryana and Delhi) also apply to managerial employees. Notice period requirements in respect of managerial employees will be governed by the terms of their employment agreement/employer's policy in this regard.

In case of termination simpliciter (which includes termination of employment on account of redundancy or unsatisfactory performance), non-managerial employees who have rendered at least 240 days of service will be entitled to Retrenchment Compensation. Employers are also required to notify the jurisdiction's labour commissioner regarding such termination (please note that this is not an approval requirement).

Additional Requirements for Factories, Mines and Plantations

In the termination of services of non-managerial employees (who have rendered at least 240 days of service) engaged in factories, mines or plantations employing at least 100 or 300 non-managerial employees (the threshold varies from state to state), an employer is required to:

- obtain prior permission from the appropriate government;
- give the non-managerial employees concerned three months' notice or salary in lieu thereof; and
- pay Retrenchment Compensation.

7.3 Dismissal for (Serious) Cause

There is no set list of acts of “serious/gross misconduct” or statutory guidance on what amounts to serious misconduct warranting summary dismissal. When determining an act to be misconduct or gross misconduct, factors such as whether the alleged act affects discipline in the organisation should be considered, or whether the act is backed by an improper motive and whether the act, if condoned, would send the wrong message to others.

As a general principle, termination on account of misconduct (gross misconduct or otherwise) should be preceded by a domestic inquiry conducted in accordance with the principles of natural justice. The employee should be given a fair opportunity to present their case/defend themselves against the charges levelled. To commence the domestic inquiry/proceeding, an employer is required to share a charge sheet or serve a show-cause notice to the employee concerned, so that they are aware of the charges levelled against them and can prepare to present their case. The parties should also be allowed to present their evidence/witnesses and cross-examine the witnesses presented by the other party. Following the inquiry, the findings should also be recorded and communicated to the employee.

As per judicial precedents, the requirement to conduct a disciplinary inquiry may be dispensed with in some cases, if:

- the misconduct is so apparent that a disciplinary inquiry is not required; or
- the act constituting misconduct has been unconditionally admitted by the employee.

7.4 Termination Agreements

While there is no statutory requirement for executing termination agreements/exit documentation, it is industry practice (and recommended) to record the terms of an employee’s exit in an appropriate document and set out the exit payments, the release of claims provisions, post-employment obligations and restrictive covenants, etc.

There are no prescribed procedures/formalities or limitations in respect of the execution of termination

documents. Depending on the nature of the exit, the documentation may vary.

In the case of resignation by an employee, a resignation acceptance letter is issued by the employer pursuant to receipt of a written resignation letter/email from the employee concerned, and it will have to be countersigned by the employee. In the case of key employees, employers may require them to execute more detailed “settlement and release agreements” that record the full and final settlement payments, as well as the related logistics and conditions.

In the case of termination of employment by the employer, the employer will issue a termination letter/notice, which is not required to be countersigned by the employee (since such termination is a unilateral act of the employer). In the case of termination simpliciter, there is no requirement to mention the circumstances of the exit in the termination notice, while in cases of termination for cause/misconduct, the termination letter will have to set out the details of the proven misconduct against the employee.

7.5 Protected Categories of Employee

Industrial relations laws in India (such as the ID Act, the IESO Act and most S&E Acts) provide protection against dismissal for the non-managerial category of employees. Protections prescribed for non-managerial employees against dismissal include prior notice requirements, payment of Retrenchment Compensation, prior approval requirements (in cases of employees engaged at factories, mines and plantations engaging more than the specified number of employees), etc.

The MB Act also prohibits the dismissal or discharge of women (engaged in managerial or non-managerial roles) during their pregnancy or while on maternity leave.

8. Disputes

8.1 Wrongful Dismissal

Employees may initiate wrongful dismissal claims on various grounds, including shortfall/denial of exit payments and failure to follow the due procedure for

termination – ie, failure to comply with a notice period in case of termination simpliciter, failure to conclude a disciplinary inquiry in cases of termination on account of misconduct, failure to comply with the “last in, first out” principle in cases of collective redundancy involving non-managerial employees, etc.

Only non-managerial employees may approach the labour courts/industrial tribunals constituted under the ID Act with a claim of wrongful dismissal. Managerial/supervisory employees would be precluded from approaching the labour commissioner, labour court, industrial tribunal, High Court or Supreme Court for any relief, and may only approach the competent civil courts or the appropriate authorities prescribed under the S&E Acts (if applicable).

In the case of a successful claim of wrongful dismissal in respect of non-managerial employees, the competent authorities may award relief of reinstatement of services (with or without back wages) and/or damages. However, in respect of managerial employees, depending on the facts and circumstances of the case, the civil courts may only award compensation/damages by way of relief; managerial employees are not entitled to any relief that is akin to the reinstatement of services.

8.2 Anti-Discrimination

Employees may raise claims/disputes in cases of contravention/non-compliance with any of the following anti-discrimination legislation in India:

- the Equal Remuneration Act 1976, which prohibits discrimination in relation to remuneration on the grounds of gender (whether at the time of recruitment or during employment);
- the Rights of Persons with Disabilities Act 2016, which prohibits discrimination on the grounds of the disability status of an employee;
- the MB Act, which prohibits discrimination based on the pregnancy/maternity status of a woman and provides for paid maternity leave entitlements;
- the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act 2017, which prohibits discrimination against persons with HIV and AIDS, and also pro-

hibits the requirement for HIV testing for obtaining employment;

- the Transgender Persons (Protection of Rights) Act 2019, which prohibits discrimination against a transgender person resulting in unfair treatment in employment, or a denial of, or termination from, employment; and
- the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, which prohibits the sexual harassment of women in the workplace.

The relief granted to the aggrieved employee can be in the form of an injunction, punishment of the offender, a penalty, compensation, reinstatement of services or another form of relief, and is subject to the provisions of the applicable law, the nature of discrimination, the impact/consequences of such discrimination, etc.

8.3 Digitalisation

There have not been any regulations regarding virtual hearings as far as employment disputes are concerned. In most labour courts/industrial tribunals, hearings continue to be conducted in person, although a few judicial forums have allowed online filings, depending on the jurisdiction.

9. Dispute Resolution

9.1 Litigation

The ID Act provides for the appointment of conciliation officers, boards of conciliation, labour courts and industrial tribunals to hear the claims of non-managerial employees. A non-managerial employee can raise a dispute directly before a conciliation officer in case of discharge, dismissal, retrenchment or any form of termination of service. All other “rights disputes” (as mentioned in the Second Schedule of the ID Act) and “interest disputes” (as mentioned in the Third Schedule of the ID Act) may be raised by the trade union or management before the labour courts or industrial tribunals, respectively.

Managerial employees may approach the civil court or the appropriate authorities prescribed under the S&E Acts (if applicable).

The common law principles of class action suits or representative litigation are found in the ID Act, which permits and facilitates collective bargaining by employees/workers (whether through a trade/labour union or otherwise).

9.2 Alternative Dispute Resolution

Disputes between employers and employees may be subject to arbitration. In fact, the ID Act provides that the employer and non-managerial employees may agree to refer industrial disputes to arbitration (as per the procedure prescribed under the ID Act) before approaching the labour courts.

The parties may agree to refer disputes arising between employers and managerial employees to arbitration in accordance with the Arbitration and Conciliation Act 1996, provided that the agreement containing the arbitration clause is adequately stamped. However, subjecting employee disputes to arbitration proceedings in India is uncommon given the personal nature of the contract as opposed to commercial agreements, and as the costs involved in arbitration proceedings mostly tend to exceed the litigation costs in employee disputes in India. Accordingly, arbitration clauses are typically not included in employment agreements in the ordinary course and are largely restricted to key executive and founders agreements.

9.3 Costs

While the relevant judicial authority may, at its discretion and depending upon the facts and circumstances of the case, award attorneys' fees to the prevailing employee, there is no statutory entitlement/right in this regard.

Trends and Developments

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Shardul Amarchand Mangaldas & Co. is one of India's marquee law firms and is committed to helping its clients grow, innovate and thrive. The firm has more than 776 lawyers who, with 161 partners, offer solutions across diverse practice areas for industries, the central government and states, regulatory bodies, industry chambers and non-profit organisations.

It has offices in New Delhi, Mumbai, Gurgaon, Bengaluru, Chennai, Ahmedabad and Kolkata. It delivers original and exceptional solutions in the fields of M&A, tax, competition law, insolvency and restructuring, dispute resolution and arbitration, regulatory litigation, capital markets and private equity.

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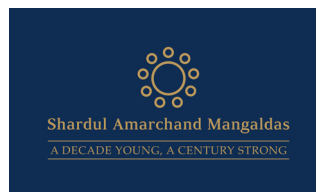
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Employment-Linked Incentive Scheme: The New Era of Social Security

India is at a pivotal stage of transformation of its social protection landscape. Securing second rank in the world for its social security coverage, India continues on its expansion trajectory in the form of the new Employment-Linked Incentive (ELI) Scheme announced by the Indian Government.

The objective of the ELI Scheme is job creation and the amplification of social security coverage with respect to provident funds. The scheme provides benefits to both employers and employees, namely:

- Employees who are first-time entrants into formal employment earning up to INR1 lakh per month are entitled to an incentive equivalent to one month's wage (capped at INR15,000). The incentive will be disbursed in two tranches, the first after six months of continuous employment and the second after 12 months. The incentive is also conditional upon receiving financial literacy training. A portion of the second instalment is required to be placed in a fixed deposit or equivalent, encouraging financial discipline.
- Employers creating "net new jobs" are entitled to monthly subsidies linked to wage bands. These are: (a) INR1,000 for employees earning up to INR10,000, (b) INR2,000 for employees earning between INR10,001 and INR20,000, and (c) INR3,000 for employees earning between INR20,001 and INR1,00,000.
- A minimum of two recruits should be hired by establishments with fewer than 50 employees and at least five by establishments with 50 or more employees. These benefits are available for two years for non-manufacturing employers, and four years for manufacturing entities.

In order to avail themselves of these benefits, employers are required to demonstrate the creation of sustained new jobs and cannot merely replace existing staff. Accurate payroll records and headcount data are therefore critical. Since registration with the Employees' Provident Fund Organisation is mandatory, casual labour will not qualify. Fixed-term and contractual employees can be considered so long as the duration of their employment aligns with the expectations of the

scheme; however, indirect employees hired through agencies are not permitted to be considered. Further, since disbursements would be via Aadhaar and PAN-linked accounts, data transparency and know-your-customer (KYC) accuracy becomes imperative to avoid delay or forfeiture of benefits.

The scheme has the potential to reduce wage costs in labour-intensive sectors such as manufacturing, retail, logistics and services. However, employers would need to be mindful of compliance requirements under the scheme to continue to receive benefits. A proactive compliance strategy including compliance auditing and the leveraging of technology-driven HR processes could go a long way. Employers should consider facilitating employee financial literacy programmes to educate their employees to fully gain from the scheme. Employment contracts and HR manuals may also require amendments to incorporate scheme-specific obligations.

The ELI Scheme, once implemented, is likely to reshape the approach towards workforce participation and employer responsibility.

ESOPs for IPO-Bound Companies: Trends and Key Considerations

The Indian market is witnessing an increase in the number of initial public offerings (IPOs), resulting in the need to have robust and well-structured employee stock option plans (ESOPs). ESOPs are no longer seen as just a retention tool, but also as a strategic mechanism to align a company's growth objectives with the interests of its employees. It ensures that the contributions of employees driving the growth of the company are both recognised by employers and translated into wealth creation that is shared with employees. However, while the intent behind an ESOP may purely be to reward or retain talent, for an IPO-bound company, it becomes critical to ensure that the structure of ESOPs is in line with the regulatory requirements and meets the standards expected by investors and other stakeholders.

In this context, the guidelines laid down by proxy advisory firms become particularly important. Most institutional investors rely on the recommendations of proxy advisory firms while taking decisions on

adoption of ESOP schemes or any amendments to such incentives. These guidelines help shareholders ensure that the extent and quantum of benefits under the schemes are not open-ended and do not vest unfettered power in the hands of the company or the compensation committee to alter the terms of the ESOP in a manner not clearly communicated to the shareholders.

Therefore, while in a private company, considerable discretion rests with the board of directors to determine the terms and conditions of ESOPs, specifically, in respect of the selection of employees, exercise price, performance parameters, and conditions for vesting and exercise, in the case of an IPO-bound or listed company, stricter governance standards are observed. Some key aspects of these restrictions are that:

- the grant of ESOPs should not be concentrated on a small group of employees and should be reasonably distributed among the employees;
- the exercise price fixed for the options should not be a deep discount relative to the market value of shares (whereas, in the case of private companies, ESOPs may often even be issued at the face value of shares);
- there should be clarity in terms of the vesting conditions, and in cases where they are performance-based, there should be indicative parameters on which such performance will be assessed;
- the ESOP pool should be fixed in a manner that does not lead to a high dilution for the shareholders; and
- the vesting and exercise periods should not be unreasonably long.

Thus, prevalent industry benchmarks on aspects such as the pool size, exercise price, vesting period, conditions, etc should be allied with proxy advisory guidelines to avoid unnecessary roadblocks at the time of approval.

Another important consideration is to ensure transparency for the shareholders from a compliance as well as a governance standpoint. The disclosures required as part of the explanatory statement should be unambiguous and provide clarity on how the ESOP

will operate. The objective is to safeguard the public shareholders against excessive dilution and disproportionate grants to founders or key management personnel on terms that result in diminution of shareholder value.

Recent trends indicate that the stock exchange regulator also prefers that the schemes are designed as a simple and traditional stock option plan without any creative provisions that would enhance flexibility in implementation or favour a selected set of employees. For instance, the regulator resists ESOPs that provide ambiguous performance benchmarks as part of their vesting conditions. The ability of the companies to liquidate ESOPs in cash in case of employee requests or corporate actions is also looked down upon by the regulator on the ground that it makes the ESOPs akin to a cash-settled stock appreciation right, which is not allowed to be carried over during the IPO process. The intention, again, is to have a scheme that is simple, transparent, fair and comparable across companies.

In the IPO landscape, thus, the key is to design ESOPs that are simple and maintain a balanced approach between governance, shareholder interest and employers' business while ensuring a defined benefit for the employees. A well-structured ESOP not only showcases the governance standards of the company but also ensures a long-term alignment between the company's and the employees' shared growth story.

Redefining Diversity and Inclusion: The Legal Imperative for Digital Accessibility in India

"We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly." – Martin Luther King Jr.

Article 21 of the Constitution of India enshrines the most elementary fundamental right of a person as the 'right to life and personal liberty', whether or not that person is a citizen of India. The boundaries of this fundamental right have been stretched time and again by the Hon'ble Supreme Court of India to encompass the 'right to travel', 'right to privacy', 'right to dignified existence', 'right to be left alone', 'right to be forgotten' and, most recently, 'right to digital access'.

India has been on the forefront in upholding the rights of persons with disabilities and the legal need to ensure their inclusion in society. The Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act was enacted in 1995, the United Nations Convention on the Rights of Persons with Disabilities was ratified by India in 2007, and the Rights of Persons with Disabilities Act was implemented in 2016 ("RPWD Act") (repealing the aforementioned law of 1995), which refined the concepts of 'benchmark disability', 'barriers' and 'reasonable accommodations'.

By way of the RPWD Act, all establishments, whether private or public, are required to statutorily implement an 'equal opportunity policy' and provide details of, inter alia, facilities and amenities to be provided to persons with disabilities to enable them to effectively discharge their duties and provision for assistive devices and barrier-free accessibility for people with disabilities. To enable inclusivity, various departments of the Government of India have frequently issued guidelines and policies on 'universal electronic accessibility' and 'web-content accessibility', with versions updated till 2023. However, despite the foregoing statutes, policies and guidelines, people with disabilities continue to face practical hurdles in conducting day-to-day affairs, and much room for improvement exists for true inclusion.

In April 2024, a batch of petitions, invoking the writ jurisdiction of the Supreme Court, were filed by survivors of acid attacks having facial disfigurement and one individual having 100% blindness, against the Union of India and other respondents (including the Reserve Bank of India (RBI), the Ministry of Electronics and Information Technology, the Telecom Regulatory Authority of India and the Securities Exchange Board of India (SEBI)) seeking relief of, inter alia, effective compliance with accessibility standards by all public and private establishments conducting digital KYC/*e-KYC/Video-KYC* *Pragya Prasun & Ors. v Union of India & Ors.* (Writ Petition (C) No. 289 of 2024 and *Amar Jain v Union of India & Ors.* (Writ Petition (C) No. 49 of 2025]).

The petitioners highlighted the following:

- Among various other structural barriers, officials and third-party agents deployed by 'regulated entities' (ie, banks, financial institutions, non-banking finance companies, asset reconstruction companies, payment system providers and agents of money transfer services) conducting KYC process are not adequately trained or sensitised to assist persons with blindness in performing or facilitating the digital KYC process.
- People with blindness are often asked to physically visit the premises, and more often than not their applications are rejected on technical grounds.
- The RBI 'Master Directions on KYC' prohibit prompting while performing digital KYC, thereby leaving people with blindness without any effective remedy, and they are unable to independently complete the digital KYC process due to the inaccessibility of the current regulations.

In so doing, people with facial/eye disfigurement and blindness are excluded from accessing digital services provided by both private and public establishments. The petitioners prayed that all public and private institutions, specifically banks, financial institutions, services providers and any intermediaries who conduct KYC, should adapt, and adopt suitable alternative methods, wherever on account of disabilities digital KYC to demonstrate 'liveness' is not feasible, beyond the traditional 'blinking of eyes'.

The Apex Court reviewed the existing guidelines framed by the RBI as regards KYC processes for visually impaired persons as well as acid attack survivors, identified deficiencies and loopholes in the existing guidelines, and gave directives to make the guidelines more meaningful and effective. The Apex Court underscored the requirement for digital transformation to be both inclusive and equitable to satisfy the principle of substantive equality.

Adhering to the directives of the Supreme Court, the RBI, as of 14 August 2025, has amended the 'Master Directions on KYC', and SEBI issued a circular on 31 July 2025, requiring all regulated entities to adhere to the provisions of the RPWD Act including conducting training sensitisation of staff and third-party service providers on behaviour, assistive tools and inclusive experience for differently abled users.

The Apex Court acknowledged the need for regulated entities, whether public or private, involved in financial services to implement sophisticated technologies and methodologies with a view to protecting money and preventing laundering or financial frauds. However, in the endeavour to implement such sophisticated technologies, reasonable accommodation needs to be made in order to enable sections of society that are unable to understand or access these technologies, commencing with the sensitisation and training of employees and officials involved in providing such services.

The laws and the recent judicial pronouncement underline the need for continued focus for establishments on diversity and inclusion initiatives in spirit and not just in letter. Companies in India involved in financial services will need to conduct prompt audits of their standard operating procedures and accessibility features (physical and digital), modify their working environment to be more accessible, train and sensitise employees, and undertake policy changes in order to comply with the directives of the Apex Court, and this is just to begin with.

The Rising Indian Gig Economy: Key Regulatory Response

India's labour market is undergoing significant transformation, marked by the rapid expansion of short-term, flexible and task-based work arrangements, ie, 'gig' work. The gig economy has taken centre stage. Gig work's popularity today has been increasingly facilitated through the rise of digital platforms that seamlessly connect freelance workers with consumers or businesses, resulting in a subsection commonly known as platform-based gig workers. Several inter-related factors – including a shortfall in the demand and supply for traditional employment structures, improved and affordable digital connectivity, a pressing need for supplementary income avenues, minimal infrastructure requirements and the rise of on-demand services – have contributed to the explosive growth of India's platform-based gig economy.

Another key driver is the booming start-up ecosystem and the rapid rise of e-commerce, which has increased the demand for a flexible, task-based workforce that can be easily scaled up and down across

sectors such as ride-hailing, delivery, logistics and home services. Initially concentrated in cities such as Delhi, Mumbai and Bengaluru, platform-based gig work and quick-commerce services are now gaining traction in Tier 2 and Tier 3 cities, broadening access to flexible income-generating opportunities and on-demand services across the country. While logistics and e-commerce continue to dominate the platform-based gig economy, the sector's early focus on ride-hailing and food delivery has increasingly diversified into areas such as home services, content writing and graphic design, demonstrating the adaptability of the gig work model to cater to evolving consumer needs.

Recognising the sector's significance, both central and state governments have introduced regulatory frameworks and welfare initiatives. The Code on Social Security, 2020 ("SS Code") represents a landmark reform, providing social security coverage for gig and platform workers. The SS Code introduces distinct definitions for 'gig' and 'platform' workers, mandates their registration for access to social security benefits, and provides for dedicated welfare schemes to be formulated for their benefit and protection.

States including Karnataka, Rajasthan, Bihar, Telangana and Jharkhand have also proactively introduced dedicated legislation and bills with additional protections aimed at securing the welfare and social security rights of platform-based gig workers at state level. These protections include dedicated welfare funds, robust grievance mechanisms, fair contracts, work allocation transparency and the right to refuse work. The State Government of Tamil Nadu, on the other hand, has extended coverage to and integrated gig workers under its existing legal framework for manual workers in the state. In addition to legislative reforms, states have also introduced practical support initiatives such as insurance schemes and rest stops with basic amenities for delivery personnel.

Further, the Union Budget 2025–26 has introduced provisions for the registration of online platform workers on the e-Shram portal, the issuance of identity cards, and healthcare coverage under the Ayushman Bharat Pradhan Mantri Jan Arogya Yojana. A pilot initiative has already been undertaken by the Ministry of Labour & Employment to register platform work-

ers and aggregators on the e-Shram portal, a national database for unorganised workers. Presently, while the SS Code envisages self-registration of gig and platform workers, the proposed state legislations shift the onus onto the platform aggregators to onboard the details of the platform-based gig workers who are engaged. The integration of the e-Shram portal with the state systems could provide a cohesive platform for seamless administration and elimination of multiplicity of registrations/identity numbers.

The rise of India's dynamic gig economy marks a fundamental shift in how work is defined, delivered and experienced. As this ecosystem expands, driven by digital platforms and evolving consumer needs, the focus is shifting towards long-term viability, with policymakers and regulators taking steps to build a workforce that offers flexibility while safeguarding workers' welfare. As these frameworks are implemented and refined, they are likely to shape the future of work and worker protections in India's gig and platform economy.

INDONESIA



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ABNR Counsellors at Law is a law firm founded in 1967 and is Indonesia's longest-established law firm. ABNR pioneered the development of international commercial law in Indonesia, following the reopening of the country's economy to foreign investment after a period of isolation in the early 1960s. With more than 100 partners and lawyers (including two foreign counsel), ABNR is the largest independent full-service law firm in Indonesia and one of the country's

top-three law firms by number of fee earners, giving it the scale needed to simultaneously handle large and complex transnational deals across a range of practice areas. It also has global reach, as it has been the exclusive Lex Mundi (LM) member firm for Indonesia since 1991. LM is the world's leading network of independent law firms, with members in more than 100 countries.

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COUNSELLORS AT LAW

1. Employment Terms

1.1 Employee Status

Indonesian employment law does not distinguish between blue- and white-collar workers. The only distinction it makes between employees relates to the type of employment agreement (ie, whether it is permanent or fixed-term). The two types of employment agreements differ in various aspects, including the employee's rights and entitlements, the possibility of probation, the duration of employment, the type of work performed by the employee, and entitlements that accrue upon termination.

1.2 Employment Contracts

An employment agreement for a specified period (fixed-term) must be in writing and in Indonesian (or Indonesian should prevail if the agreement is bilingual). It is established based on either the employment period or the completion of specific work. If based on an employment period, the agreement will have a maximum cumulative period of five years (including any extension thereof). If based on the completion of specific work, the agreement must pertain to work that is either completed in a single assignment or is temporary in nature.

However, an employment agreement for a permanent employee may be made orally or in writing. In the former case, the employer must issue a letter to the employee confirming permanent employment. The appointment letter must contain:

- name and address of the employee;
- starting date of employment;

- type of work; and
- the wage.

The terms and conditions that must be included in a written employment agreement include:

- name, address and line of business of the employer;
- name, gender, age and address of the employee;
- title or type of work;
- location of workplace;
- the wage and how it will be paid;
- terms of work, stating the rights and obligations of both the employer and employee;
- effective date and validity period of the employment agreement;
- place and date where the employment agreement is made; and
- signatures of the parties.

1.3 Working Hours

Regular working hours in Indonesia are considered to be:

- seven hours per day and 40 hours per week for six working days per week; or
- eight hours per day and 40 hours per week for five working days per week.

Flexible-working-hour arrangements are possible subject to consensus between the parties under the employment agreement, employee handbook (also known as company regulation) or collective bargaining agreement.

An employee is considered part-time if the working hours are fewer than seven hours per day and 35 hours per week. Wages for part-time employees may be calculated on an hourly basis.

Overtime work can only be performed at the request of the employer and with the employee's consent, which must be provided in either hard copy or digital form. Employees may work a maximum of four hours of overtime per day and 18 hours per week.

Employees subject to overtime work are entitled to receive overtime pay. The amount in overtime pay is based on hourly rates, calculated as $1/173 \times$ monthly wages (basic salary and fixed allowance). In addition to receiving overtime pay, employees must be given sufficient rest opportunities. If employees work overtime for four hours or more, they must also be provided with food and beverages totalling at least 1,400 kcal.

The working hours that exceed the maximum daily and weekly limits are only applicable in specific sectors and for specific positions, including:

- energy and mineral resources;
- mining;
- upstream oil and gas;
- agribusiness and horticulture; and
- fisheries.

Exclusion from overtime pay exists for employees in roles such as thinker, planner, implementer or supervisor, whose work hours differ from those of other employees such that they receive a higher wage. These exempted positions must be clearly defined in the employment agreement, employee handbook or collective bargaining agreement.

1.4 Compensation

Minimum wages vary between provinces and sectors of business, and only apply to employees who have been with a particular company for less than one year. The governor of a province stipulates minimum wages based on the suggestions and considerations of a wages council. The governor of a province may also set minimum wages for cities or regencies (districts) under their jurisdiction.

There is no mandatory 13th-month salary for employees in the private sector. Further, incentives, bonuses or reimbursement of work facilities are based on an agreement between an employer and employee, as well as the employer's policy.

No government intervention takes place with respect to determining the procedure for and amount of compensation, pay increases, etc, apart from the minimum wage stipulation. These matters are left to the discretion of the employer and the terms agreed with the employee.

Additionally, Indonesian employment law recognises a mandatory religious holiday allowance of one month's wages for employees with 12 months of consecutive service. For those with service periods of one to 12 months, the allowance is paid pro rata. The allowance should be paid at least seven days before the relevant religious holiday (eg, Eid al-Fitr or Christmas, depending on the employee's religion or the employer's policy).

1.5 Other Employment Terms

Employees are entitled to paid leave, as further explained in section 5.2 **Sabbaticals**.

No specific regulations exist on confidentiality or non-disparagement under Indonesian employment law; the applicability depends on the agreement between an employer and employee. These obligations are commonly inserted and agreed under the employment agreement or in a separate document (as the case may be).

There is no specific limitation on employee liability under the law. Pursuant to the Indonesian Civil Code, employers are liable for losses or damage caused by their employees. However, under the employment law, employers may make a deduction of up to 50% from an employee's salary to compensate for loss or damage suffered by the employer, subject to provisions in the employment agreement, employee handbook or collective bargaining agreement. The deduction can be made from the employee's monthly wages until the loss or damage suffered by the employer is compensated for fully.

2. Restrictive Covenants

2.1 Non-Competes

Indonesian employment law does not specifically regulate non-compete clauses. Non-compete clauses can be agreed in practice by an employer and employee in an employment agreement or termination agreement (as the case may be). Given that there is no specific regulation on non-compete clauses, the validity and enforcement of non-compete clauses are subject to general contract law. They can be enforced should a breach occur, according to the dispute resolution terms specified under the agreement and the prevailing Indonesian civil procedural law.

2.2 Non-Solicits

As with non-compete clauses, Indonesian employment law does not expressly contain non-solicitation clauses. The matter can be agreed upon in an employment agreement or termination agreement (as the case may be). The validity and enforcement of non-solicitation clauses are also subject to general contract law. Non-solicitation can be enforced should a breach occur.

- contractual necessity;
- compliance with a data controller's legal obligations;
- protection of the vital interests of the data subject;
- public interest, for the provision of public services or the exercise of lawful authority; and
- legitimate interest.

In this regard, depending on the specific purpose of processing, an employer may or may not be required to obtain express consent, which will require further assessment on a case-by-case basis.

An implementing regulation of the EIT Law is the Ministry of Communications and Informatics (MOCI) Regulation No 20 of 2016 on Protection of Personal Data in Electronic Systems ("MOCI Regulation No 20/2016"). Under PDP Law and MOCI Regulation No 20/2016, every company is required to increase awareness and prevention, and implement organisational steps (internal regulations) to protect the personal data of their employees. This can be done by, among other steps, conducting training to prevent the failure to protect personal data managed by human resources, and determining the level of security of personal data based on its nature and associated risks.

3. Data Privacy

3.1 Data Privacy Law and Employment

There is currently no specific data privacy law or regulation in the employment sphere.

In so far as an individual's private or personal data or information is used, collected, processed, analysed, stored, displayed, sent, shared, destroyed or transferred via electronic media, Law No 27 of 2022 concerning Personal Data Protection (the "PDP Law"), as well as Law No 11 of 2008 on Electronic Information and Transactions as lastly amended by Law No 1 of 2024 (the "EIT Law"), applies. The PDP Law and the EIT Law set the principal standard for the handling of general electronic information and data protection.

The PDP Law stipulates that the processing of personal data must be based on a specific lawful basis, including the following:

- consent;

4. Foreign Workers

4.1 Limitations on Foreign Workers

Expatriates can only be employed under a fixed-term employment agreement, and such employment is strictly subject to the validity and scope of their work permit issued by the relevant Indonesian government authorities. Expatriates cannot be employed for multiple positions in the same company and are prohibited from holding positions that involve responsibility for employment-related matters.

The holding of multiple positions at different companies is permissible, provided the positions are at the board of director or commissioner level (for a limited liability company); trustee, manager or supervisor level (foundation); or employee level in the context of vocational education and training, the digital economy, or the oil and gas sectors for contractors under co-operation agreements.

No statutory limitations or maximum quotas on the number of expatriates a company may employ. Nonetheless, Indonesian employment law explicitly requires that employers prioritise the hiring of Indonesian nationals, reflecting the government's commitment to support and strengthen the local workforce.

In addition, the company must appoint an Indonesian mentee for each expatriate. The expatriates are required to provide education and training programs to the Indonesian mentees to transfer their knowledge and skills.

4.2 Registration Requirements for Foreign Workers

Registration requirements that apply to the use of foreign workers include:

- a written application to the Ministry of Manpower, outlining the:
 - (a) identity of the employer;
 - (b) reasons for the use of the expatriate;
 - (c) role or position of the expatriate in the organisational structure;
 - (d) number of expatriates;
 - (e) periods of use of expatriates;
 - (f) identity of local counterpart employees for transfer of knowledge; and
 - (g) annual work plan for the deployment of expatriates;
- corporate documents of the employer;
- a draft of the expatriate's employment agreement;
- a chart that illustrates the employer's organisational structure;
- an undertaking to facilitate Indonesian language lessons for expatriates; and
- the expatriate's personal data.

5. New Work

5.1 Mobile Work

To date, there are no specific regulations and/or restrictions on mobile work in Indonesia. Consequently, whether or not mobile work is to be performed depends on the agreement between the employer and the employee and/or the employer's policies.

Nevertheless, the Indonesian employment law stipulates that an employment agreement must at least include information on the location of the workplace. As such, if a mobile work arrangement is agreed between the employer and the employee, conservatively, it must be specified under the employment agreement, employee handbook, or collective bargaining agreement.

Data privacy regulations in relation to mobile work will follow the general data privacy regulations, as there are no specific data privacy regulations related to mobile work. Please see **3.1 Data Privacy Law and Employment**.

In terms of occupational safety and health (OSH) in relation to mobile work, there are also no specific regulations and/or restrictions in this regard, and general OSH regulations would apply.

Similarly, there are also no specific regulations and/or restrictions for social security regarding mobile work. The Manpower Social Security and the Health Social Security programmes will also cover employees engaging in mobile work.

What would generally be an issue in a mobile work arrangement, concerning OSH and social security, would be how to determine work accidents. Under OSH regulations, employers are required to report every work accident that occurs to the authorities. Work accidents will further be covered under the social security programme. Generally, work accidents are:

- accidents that occur due to work and/or at the location of the workplace;
- accidents that occur on the way from home to work or through the usual or a reasonable route;
- accidents that occur while carrying out duties or official business travel on orders and/or for the benefit of the employer, or that are related to work;
- accidents that occur during work hours, or during break times in which important and/or urgent work is being performed with the permission or knowledge of the employer;
- sickness due to work; and
- sudden death due to work.

With the above definition of work accident in mind, in a mobile work arrangement, it would be difficult to determine a work accident, which would also affect employers' obligation under the OSH regulations.

5.2 Sabbaticals

Indonesian employment law does not explicitly recognise the concept of sabbatical leave.

The types of leave that are recognised in Indonesia are as follows.

- Annual leave – employees are entitled to paid annual leave of at least 12 days upon completion of 12 consecutive months of service.
- Long leave – employees may be provided with paid long leave, as stipulated in the employment agreement, employee handbook or collective labour agreement. Previously, long leave was only given to employees after six years of continuous service. However, the minimum service period has been removed under the Indonesian employment law.
- Menstrual leave – female employees who are in pain during their menstrual period are entitled to two days of paid menstrual leave (ie, the first and second day of their menstrual period).
- Maternity leave – under the Indonesian employment law, paid maternity leave lasts for one and a half months before delivery, and for the same duration after delivery, as estimated by an obstetrician or midwife. In practice, however, most employers will allow maternity leave to be taken as a single period of three months after delivery. Maternity leave may be extended if required, as confirmed in a written statement from an obstetrician or midwife either before or just after delivery. In addition, under Law No 4 of 2024 on Maternal and Child Welfare During the First 1,000 days of a Child's Life (the "KIA Law"), maternity leave may be extended for another 3 months in special circumstances, provided that a doctor's certificate supports this.
- Leave following miscarriage – female employees who suffer a miscarriage are entitled to one and a half months of paid leave, or a period of leave as recommended in the medical statement issued by the relevant obstetrician or midwife.
- Paternity leave – male employees are entitled to two days of paid paternity leave in the event that

their wife gives birth or experiences a miscarriage. Under the KIA Law, when the wife gives birth, the leave may be extended by up to 3 additional days, or as agreed.

- Prolonged illness – employees may leave due to an illness of long duration, and a physician's certificate should be presented or required whenever possible. The certificate may be issued by either a private doctor or the employer's doctor. In the event of a prolonged illness, the employee is entitled to the payment of wages in the following amount:
 - (a) first four months – 100% of the wage;
 - (b) second four months – 75% of the wage; and
 - (c) third four months – 50% of the wage.

For each consecutive month exceeding the above period until the employer terminates the employment relationship, the employee continues to be entitled to 25% of their wages. After this period, the employer may terminate employment by paying the stipulated severance package to the employee.

Religious obligations – employees are entitled to paid leave due to the performance of a religious obligation (such as the Hajj in Mecca). The duration of leave permitted for a religious pilgrimage is determined by the Ministry of Religious Affairs. This obligation to pay wages during leave due to the performance of a religious obligation is applicable only once for each employee during their respective service period.

Additionally, employees are entitled to paid leave in the event of:

- marriage of the employee – three days;
- marriage of the employee's child – two days;
- circumcision of the employee's child – two days;
- baptism of the employee's child – two days;
- death of employee's spouse, parents, in-laws, child or child-in-law – two days; and
- death of a member of an employee's household – one day.

Other than the above, although not stipulated, in practice, employees may also take unpaid leave based on the employer's policies, at the employer's discretion, or subject to an agreement between the employer and

the employee, bearing in mind the principle of “no-work-no-pay” that is recognised under Indonesian employment law.

Thus, sabbatical leave may refer to an extended period of leave, such as paid long leave, unpaid leave, prolonged illness, and/or leave due to religious obligations, with no specific restrictions other than those pertaining to the particular leave period as well as work benefits and the payment of salary (ie, paid or unpaid).

5.3 Other New Manifestations

There are currently no new legal developments or anticipated regulatory changes in the field of “new work” in Indonesia. The government is not expected to issue any laws or regulations regarding this matter.

Despite the absence of formal regulation, companies in Indonesia have introduced the usage of certain new practices, such as:

- desk-sharing;
- clean-desk policy;
- hybrid/remote working; and/or
- having an office with open space.

As these practices are not currently regulated by Indonesian employment law, their implementation is subject to each company’s internal policies or mutual agreements between the employer and the employee. This allows employers to have flexibility in having their own work arrangements that best suit their business models, provided such arrangements remain in general compliance with Indonesian employment law.

It is worth noting that, in 2023, the Indonesian Constitutional Court issued Decision No 168/PUU-XII/2023 dated 31 October 2024 (“Decision 168”), which clarifies several provisions of the Indonesian employment law without making any major changes or amendments and suggests that a new employment law will be drafted within two years. In line with this, the proposed amendment has been included in the 2025–2029 National Legislation Program. However, no draft has been released, and no official updates on its progress have been made available to date.

6. Collective Relations

6.1 Unions

Rules related to labour unions are contained primarily in Law No 21 of 2000 on Labour Unions. For a labour union to be recognised, following its establishment, it must:

- register itself in writing with the local office of the manpower agency; and
- notify the employer of its establishment and registration number, which the employer is obliged to accept.

A recognised labour union is entitled to:

- negotiate a collective labour agreement with company management (subject to certain requirements);
- represent employees in industrial relations dispute settlements;
- represent employees in manpower institutions;
- establish an institution or carry out activities related to efforts to improve employee welfare;
- carry out other manpower or employment-related activities that do not violate the prevailing law or regulations;
- establish and become a member of a labour union federation; and
- affiliate or co-operate with an international labour union or other international organisation.

6.2 Employee Representative Bodies

Other than labour unions, Indonesian employment law also recognises bipartite co-operation bodies (BCBs). Employers that employ more than 50 employees are obliged to establish a BCB.

A BCB functions as a communication-and-consultation forum between an employer and representatives of a labour union and employees, to improve industrial relations.

Members of a BCB comprise representatives of the employer and employees/labour union (with equal composition and at least six members).

6.3 Collective Bargaining Agreements

Indonesian employment law recognises collective bargaining agreements as instruments for collective bargaining between one or several registered labour unions and one or several employers or employer organisations. Collective labour agreements are valid for two years from execution and extendable for one year. Collective labour agreements must be registered with the manpower agency with jurisdiction over the employer's work location.

Collective bargaining agreements contain the rights and obligations of the employer, labour union and employees, but in more detail. As a general rule, the quality and quantity of the conditions of employment stipulated in the collective labour agreements must not be less beneficial than those regulated under the prevailing laws and regulations.

Although there are some instances where bargaining takes place at the industry level, the majority of bargaining over collective bargaining agreements takes place within companies.

Additionally, despite the similarities, collective bargaining agreements must be differentiated from an employee handbook. A collective bargaining agreement is drafted and agreed upon based on negotiations between the employer and the registered labour union(s). In contrast, the employee handbook is drafted by the employer, taking into account suggestions from employee/labour union representatives, and further approved by the manpower agency with jurisdiction over the employer's work location. Similar to collective bargaining agreements, the employee handbook stipulates the general rights and obligations of the employer and the employee.

A company may maintain only one of these work rules at a time. Collective bargaining agreements will be prepared if there are any labour union(s) in the company that qualify the minimum requirement to initiate a collective bargaining agreement negotiation. An employee handbook must be prepared if the company employs at least 10 employees.

7. Termination

7.1 Grounds for Termination

In principle, the prevailing Indonesian laws discourage termination of employment. Employers, employees, labour unions, and the Indonesian Government are required to make every possible effort to avoid it. If termination seems inevitable despite all of these efforts, it must be effected by following the rules and procedures prescribed in the Indonesian employment law.

Employment termination may not be carried out unilaterally by an employer without stating a reason that has been specified in the prevailing manpower law and regulations, employee handbook, collective labour agreement, or the employment agreement. Consequently, to unilaterally terminate an employee, the employer must be able to identify suitable grounds for termination and prepare sufficient/appropriate justification. The reason for termination of employment must be clearly stated in the written notice for termination (see **7.2 Notice Periods**).

Employment termination may be initiated by either the employer or the employee for reasons related to an individual employee or for business-related reasons.

For Reasons Related to an Individual Employee

Employment may be terminated in the following circumstances:

- at the request of the employee because the employer:
 - (a) assaulted, violently insulted or threatened the employee;
 - (b) persuaded or ordered the employee to act in contravention of the law;
 - (c) did not pay the employee's salary on time for three consecutive months or more;
 - (d) did not perform its obligations to the employee as agreed;
 - (e) ordered the employee to work outside the agreed scope of work; or
 - (f) assigned work that endangered the life, safety, health or morality of the employee, outside the agreed scope of work;

- the existence of a final and binding court decision declaring that the employer did not act as stated in the preceding paragraph, and the employer decided to terminate the employment;
- employee's voluntary resignation;
- employee's absence for five consecutive days or more without written notification accompanied by valid evidence, despite being properly summoned by the employer twice;
- employee's violation of the employment agreement, employee handbook or collective bargaining agreements after having received warning letters;
- employee's serious violation (gross misconduct);
- detention of the employee by the authorities for at least six months;
- prolonged illness or disability (for more than 12 consecutive months) due to a work accident;
- reaching retirement age; and
- the employee has passed away.

For Business-Related Reasons

Employment may be terminated in the following circumstances:

- merger, consolidation, acquisition or spin-off of the employer (and where the employee is not willing to continue the employment), or the employer is not willing to accept the employee;
- redundancy, whether or not followed by closure of the employer's business due to losses or their prevention;
- employer permanently closes down the business owing to continuous losses for two years;
- employer permanently closes down the business owing to force majeure;
- employer is under a state of suspension of payment; and
- employer is declared bankrupt.

Other than the grounds for termination listed above, an employment relationship can also be terminated by way of mutual agreement (ie, with the consent of both the employer and the employee) via execution of a Mutual Employment Termination Agreement (META) (see 7.4 Termination Agreements).

Specifically, for a contract employee employed under a definite-term employment agreement, the employ-

er has the right to terminate the employment (before the expiry of the agreement's term) regardless of the grounds for termination. The employer must pay compensation to the employee, the amount of which is equal to the amount of salary that the contract employee would have received until the expiry of the definite-term employment agreement and (only for an Indonesian contract employee) the compensation at the end of the employment, amount of which depends on the employee's length of service.

There are no procedures for specific grounds for termination that differ according to the number of employees that will be terminated (including collective redundancy/mass termination). All terminations will be implemented with the same procedure.

7.2 Notice Periods

If the employer unilaterally terminates the employment, they must provide written notice of termination to both the employee and the labour union (if the employee is a member) at least 14 business days before the intended termination date. For employees in a probationary period, the notice period is seven business days. If the employment agreement, employee handbook or collective labour agreement stipulates a longer notice period, the employer must comply with this specified notice period or make payment in lieu of notice, if permissible. As for termination due to an employee's serious violation (gross misconduct), prior notification is not required; thus, the termination can be effective immediately upon issuance of notice of termination.

The employee may reject the termination in writing, with reasons for rejection, within seven business days of receipt of the notice of termination.

If, after being notified, the employee rejects termination, the employer and the employee will undergo the bipartite negotiation. If the employer and the employee successfully reach a mutual agreement during the bipartite, the parties may settle the issue amicably by entering into a META (see 7.4. Termination Agreements) reflecting the terms of the settlement. However, if that fails, the parties shall undergo the industrial relations dispute settlement mechanism provided under prevailing laws and regulations. These include:

- mediation at the local office of the manpower agency or conciliation by a private conciliator; and
- if necessary, court proceedings at the Industrial Relations Court, and, ultimately, at the Supreme Court.

In the event of rejection, the employment relationship will continue until the parties reach a mutual settlement or the issuance of a final and binding court decision declaring employment termination. Consequently, the employer must continue paying the employee's salary until the employment termination date, and the employee must continue to perform their work obligation, unless the employee's suspension is in place.

Employees are entitled to a severance package upon termination, comprising severance pay, service appreciation pay and compensation of entitlements. The amount in the severance package depends on the employee's length of service and the reason for termination. The standard computation to calculate the severance package is stipulated in Article 40 of Government Regulation No 35 of 2021 on Fixed-Term Employment Agreements, Outsourcing, Work and Rest Hours, and Termination of Employment (GR No 35/2021). This standard computation of the severance package is then increased by the multiplier specified for each reason for termination. Employees may be suspended on full pay during the termination process.

Based on Decision 168, which provides further clarification on how the provisions of the employment law shall be interpreted, the amount of the severance package payable by the employer shall be, at a minimum, in accordance with the relevant provisions of the employment law; by extension, the provisions of GR No 35/2021.

The Indonesian employment law and GR No 35/2021 do not regulate the size of the severance package payable under mutual termination. Therefore, the amount paid is subject to mutual agreement between the employer and the employee. In a META, both parties may also waive the notice requirement, and the employer will make a payment in lieu of notice.

For the termination of a contract employee before the expiry of the contract, the contract employee will not

be entitled to a severance package. The employer, however, shall provide compensation in an amount equal to the amount of salary the employee would have received until expiry of the contract's term, unless the termination is for reasons that may cause termination of the agreement as specified in the employment agreement, employee handbook or collective labour agreement. In addition, specifically for an Indonesian contract employee, the employer must also pay compensation at the end of employment, calculated according to the formula stipulated in GR No 35/2021.

External advice/authorisation is not required before an employer terminates an employee or serves written notice. However, the employer must report the termination to the Ministry of Manpower or the manpower agency with jurisdiction over the employee's work location. In the event of mutual termination, the META must be registered with the relevant Industrial Relations Court.

7.3 Dismissal for (Serious) Cause

Indonesian employment law recognises termination of employment for a serious violation (gross misconduct). Unlike regular employment termination, termination for gross misconduct does not require a minimum notice period; thus, the termination can be effective immediately upon issuance of the notice of termination. Employees terminated for gross misconduct will not be entitled to severance pay or service appreciation pay. Instead, they will be entitled to compensation of entitlements and separation pay in the amount regulated under the employment agreement, employee handbook or collective labour agreement.

The notice of termination for gross misconduct can be challenged or objected to by the employee; if challenged or objected to, the employment relationship will continue until both parties reach a mutual settlement or a final and binding court decision is issued declaring the termination of employment. As a result, the employer must continue to pay the employee's salary until the employment termination date, and the employee must continue to fulfil their work obligations, unless the employee is under suspension.

As the law is silent on types of gross misconduct, violations considered gross misconduct must be explicitly stipulated in the employment agreement, employee handbook or collective labour agreements.

For reference, GR No 35/2021 provides the following examples of action that can be classified as gross misconduct (to be further stated in the employment agreement, employee handbook or collective labour agreement):

- committing fraud, theft or embezzlement of company goods or money;
- providing false or falsified information that is detrimental to the company;
- being drunk, consuming intoxicating liquor, or using or distributing narcotics, psychotropic or other addictive substances in the work environment;
- engaging in immoral acts or gambling in the work environment;
- attacking, abusing, threatening or intimidating co-workers or employers in the work environment;
- persuading co-workers or employers to commit acts that are contrary to the law and regulations;
- carelessly or deliberately damaging or placing company property in danger, which causes harm to the company;
- carelessly or deliberately placing co-workers or employers in danger at work;
- revealing or divulging company information that should be kept confidential, except in the interests of the state; and
- committing other acts within a company, punishable by imprisonment of 5 years or more.

Even though it is not expressly required under the Indonesian employment law, if the gross misconduct constitutes a criminal act, the Industrial Relations Court may require a final and binding criminal court decision declaring that the employee has indeed committed a criminal act, as proof of the employee's violation, in relation to their termination.

7.4 Termination Agreements

Termination agreements (or a META, as explained above) are permissible under Indonesian employment laws and regulations, which are usually entered into

between the employer and employee if the employment relationship is mutually terminated. The META is usually formed based on the mutual consensus of the employer and the employee, wherein the parties' agreement to enter into a META is done under the principle of freedom of contract provided under the Indonesian Civil Code.

Upon execution, the META must be registered with the Industrial Relations Court having jurisdiction over the META-signing location. A duly executed META is valid and binding upon execution of the META and the payment of the severance package. Registration of META is only a procedural formality.

There are no specific requirements or limitations on the terms of a META, as these will be based on the parties' agreement. In general, the META can stipulate the effective date of termination, the amount in the severance package that the employer will pay to the employee, and even post-employment termination obligations such as non-solicitation, non-compete and confidentiality provisions that the employee shall adhere to for a certain period, provided they do not contravene the law, general principles and public order.

7.5 Protected Categories of Employee

There is no specific protection against dismissal for particular categories of employees. However, employers are prohibited from terminating an employee for the following reasons:

- prolonged illness not exceeding 12 months;
- fulfilment of a state obligation;
- adherence to a religious obligation;
- marriage;
- pregnancy, giving birth, miscarriage or nursing a baby;
- being related by blood or through marriage to another employee in the company;
- establishing, becoming a member of or managing a labour union;
- participating in labour union activities outside working hours (or during working hours in accordance with an employment agreement, employee handbook or collective labour agreement);

- reporting the employer to the authorities for crimes allegedly committed;
- differences of opinion, religion, political orientation, ethnicity, colour, race, gender, physical condition or marital status; and
- permanent disability, illness due to a work accident or illness due to occupational disease, for which the period of recovery cannot be ascertained (as attested to by a physician).

8. Disputes

8.1 Wrongful Dismissal

Wrongful dismissal is regarded as termination of employment without valid reasons (as stipulated under the Indonesian employment law) or if the termination is not carried out through proper procedure.

The consequences of wrongful dismissal claims may include the following, subject to the consideration and discretion of the court judges on hearing and examining the industrial relations dispute:

- payment of the maximum amount in the severance package;
- payment of wages during the period between termination and the issuance of a final and binding court decision on the case (Industrial Relations Court or Supreme Court decision); and/or
- annulment of the termination and reinstatement of the employee to their previous position.

8.2 Anti-Discrimination

Indonesia has ratified the International Labour Organisation Convention No 111 of 1958 on Discrimination in Respect of Employment and Occupation. Thus, discrimination regulated in this Convention is sufficient grounds for an anti-discrimination claim. In other instances, it can encompass:

- discrimination over a job opportunity and equal treatment from an employer;
- discrimination in relation to the salary of male and female employees doing the same job; and
- discrimination against an employee with HIV/AIDS.

The burden of proof for anti-discrimination claims follows the general civil procedural law, as it lies with the claimant.

Under the Indonesian employment law, anyone applying for a job has the same opportunity to obtain the job without being discriminated against on the grounds of gender, ethnicity, race, religion, or political orientation, in accordance with the person's interest and capability. Equal treatment also applies to persons with disabilities.

Further, employees have the right to receive equal treatment without discrimination from their employer, and employers are obliged to provide their employees with equal rights and responsibilities, free from discrimination on the basis of gender, ethnicity, race, religion, skin colour or political orientation.

The Indonesian employment law imposes administrative sanctions for violations of the discrimination rules. However, it does not specifically stipulate the damages/relief applicable in an anti-discrimination claim. Nevertheless, under the general tort provision in the Indonesian Civil Code, a person who commits an unlawful act that causes harm to another person must compensate that person for the damages caused.

Alternatively, if an employee opts to file an employment termination claim with an Industrial Relations Court, they may receive a severance package if the court accepts the claim.

8.3 Digitalisation

An electronic court or e-court system has been established in Indonesian courts as a follow-up to Supreme Court Decree No 7 of 2022 on the Amendment to Regulation of the Supreme Court No 1 of 2019 on the Administration of Cases and Legal Proceedings in Courts Via Electronic Means, which stated that the administration and legal proceedings via electronic means shall apply to special civil law cases, including those under the Industrial Relations Court. The regulation of an e-court only applies to court proceedings before the Industrial Relations Court and does not regulate further regarding employment disputes undergoing bipartite negotiation, mediation, conciliation, or arbitration.

In practice, the implementation of the e-court proceedings at the Industrial Relations Court of Jakarta is still in development and is generally subject to the discretion of the judges handling the respective cases.

9. Dispute Resolution

9.1 Litigation

Industrial relations disputes in Indonesia are settled via a three-tier mechanism:

- bipartite meeting;
- mediation at the local office of the manpower agency or conciliation by a private conciliator; or
- court proceedings at an Industrial Relations Court specifically established to hear and examine industrial relations disputes.

An appeal to the Supreme Court may be filed by any of the parties against a decision of the Industrial Relations Court. The Industrial Relations Court's decision, which is not appealed, and the Supreme Court's decision shall be final and binding on the parties.

There are no specific rules on class action for an employment dispute, nor has this ever been tested via class action. However, in regular Industrial Relations Court proceedings, there is no limitation on the number of plaintiffs. In practice, it could be hundreds in a mass termination case.

Parties to an industrial relations dispute may act on their own behalf, or be represented by attorneys, by a labour union or by an employer's organisation of which they are a member.

9.2 Alternative Dispute Resolution

The industrial relations dispute settlement mechanism mandates that the employer, employee and labour union (if relevant) first try to settle the dispute through bipartite and/or mediation proceedings, both of which are also considered alternative dispute-resolution avenues, before commencing proceedings in the Industrial Relations Court.

Arbitration is another possible alternative method for resolving an industrial relations dispute. However, it is only allowed for:

- a dispute regarding the drafting or amendment of the terms and conditions of work (normally in a collective labour agreement negotiation); or
- a dispute between different labour unions in one company.

As a matter of general Indonesian arbitration law, pre-dispute arbitration agreements are enforceable. Nevertheless, agreements to arbitrate, post-dispute, are also recognised.

9.3 Costs

Attorneys' fees cannot be awarded to the other party. As stipulated under Indonesian Civil Procedural Law, attorneys' fees are borne by those who utilise them.



Law and Practice

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Arnon, Tadmor-Levy is a recognised leader across various practice areas, offering a wide range of legal services and a proven track record of success. Its clients include many of Israel's largest companies, government and public entities, and leading multinational corporations. The firm's labour law practice is among the most prominent and experienced in Israel, with a highly skilled team that advises and represents employers in all aspects of employment relations. The firm advises Israeli and foreign employers on navigating the dynamic landscape of the Israeli

workplace. The department is at the forefront of legal expertise and practice, providing clients with practical and creative solutions to the various challenges associated with employing a workforce. The firm's clients in this field include leading Israeli and international corporations employing thousands of workers, as well as start-ups with a small number of employees. The department advises companies across a range of sectors including, high-tech (software and biotechnology), communications, traditional industry, construction, services and government enterprises.

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1. Employment Terms

1.1 Employee Status

The expression “manual labour” is referenced in several Israeli legislative texts, yet it lacks a formal legal definition. Under Israeli law, the generally accepted distinction is that a blue-collar worker (ie, a manual labourer) is an employee whose work is primarily the product of physical effort. In contrast, a white-collar worker may use their hands in the course of their duties, but the essence of their work is not the result of manual or physical labour.

Importantly, even work that is not inherently physical may, in certain circumstances, be classified as manual labour. However, for several specific occupations, Israeli regulations and case law have explicitly determined that these do not constitute manual labour. Examples include administrative or clerical work, technical roles involving training and installation of electronic products, electronics technicians, cleaning staff, and caregivers.

A key legal implication for blue-collar workers is their entitlement to a work break at an earlier stage of the workday, as established under labour laws such as the Working Hours and Rest Law.

Beyond the blue-collar/white-collar distinction, Israeli labour law recognises additional employee statuses, including:

- full-time v part-time employees;
- permanent v temporary employees;
- salaried v hourly wage employees;
- outsourced (agency) workers; and
- managerial or “position of trust” employees (with unique terms regarding working hours and overtime pay).

Each classification may influence the applicability of certain labour rights and protections.

1.2 Employment Contracts

According to Israeli law, employees can be employed under two types of contracts: an indefinite contract (ie, work without a predetermined termination date) or a fixed-term contract (for a predefined period or for

a specific task). In the case of a fixed-term contract, the employer is obligated to work until the end of the period stipulated in the contract. Even if an employer chooses to terminate the employment before the end of the fixed period, it may be obligated to pay the employee’s wages until the end of the fixed period. At the end of the fixed period, the employment contract automatically expires and the employment relationship ends. In any other case in which an employer wishes to terminate the employment of an employee – whether it is a fixed-term contract or an open contract – a full and proper dismissal process must be followed, including a hearing before a decision is made. The purpose of the hearing is to allow the employee to present their claims and defend their rights before a final decision is made in their case.

1.3 Working Hours

According to Israeli law, the length of a standard full-time workday in places that operate five days a week is 8.6 hours. On one day of the week, an employee is entitled to a shortened workday of 7.6 hours. The total duration of a typical full-time workweek is 42 hours. Employees are of course permitted to work overtime. According to the general permit applicable in the Israeli labour market, employees can work up to 12 hours a day (including overtime) and up to 16 hours of overtime per week. Overtime must be compensated at a higher rate – 125% of the regular wage for the first two hours and 150% for each additional hour thereafter. Certain categories of employees, such as those in managerial positions or “trust roles,” may be exempt from the entitlement to overtime pay. Flexible work arrangements are possible and can be agreed upon between the employer and the employee, provided they meet the legal requirements and do not waive any mandatory rights. Part-time employment contracts must specify the scope of employment, including the number of weekly or monthly hours, and the employee’s rights (such as wages, benefits, and time off) are calculated on a daily basis and proportionally to those of full-time employees.

1.4 Compensation

In Israel, the minimum wage is set by law and updated periodically by the government. As of 2025, the legal minimum wage is NIS6,247.67 per month for full-time employees, or NIS34.32 per hour. Employers are

required by law to pay at least the minimum wage, and failure to do so may lead to criminal and administrative proceedings. There is no legal requirement for a 13th-month salary (annual bonus) in Israel, although such payments may be acceptable in certain industries or given at the discretion of the employer. Bonuses, commissions, and other incentive payments are generally subject to the terms of the employment contract or collective bargaining agreements (CBAs), and are not required by law unless expressly agreed. The government plays an active role in regulating wages, mainly through periodic adjustment of the minimum wage and through sectoral collective agreements that may set a higher minimum or additional benefits for certain industries. Salary increases may also be determined by CBAs or individual negotiations, but must always meet the legal minimum wage and other legal requirements.

1.5 Other Employment Terms

Employees in Israel are entitled to paid annual leave in accordance with the Annual Leave Law. The minimum entitlement is usually 12-14 days per year for full-time employees, and it increases with seniority and varies depending on the structure of the work-week. The vacation payment is calculated based on the employee's regular salary. Unused vacation days can be accrued within certain limits, but employers are encouraged to ensure that employees use their time off. Israeli law requires different types of paid and unpaid leave, including the following.

- Maternity leave: female employees are entitled to 26 weeks of maternity leave, part of which is paid by the National Insurance Institute, subject to eligibility.
- Paternity leave: fathers may be entitled to a portion of maternity leave or separate paternity leave, subject to eligibility.
- Sick leave: employees accrue 1.5 sick days per month, up to a maximum of 90 days. Sick pay is subject to waiting periods and statutory rates.
- Childcare leave: parents may be entitled to unpaid leave after maternity leave, and there are additional rights for parents of children with disabilities.
- Other types of leave: these include leave for military reserve duty, bereavement, adoption.

Employment contracts usually include confidentiality clauses and a prohibition of defamation. Confidential obligations are enforceable, provided they are reasonable in scope and duration. Defamation clauses are also enforceable in general, but they must not infringe upon statutory rights, such as the right to unionise or report corruption. The employee's liability for damages caused during the course of work is limited. Under Israeli law, employees are generally not liable for ordinary negligence but may be liable for malicious conduct or gross negligence. Employers are encouraged to maintain insurance to cover potential liabilities arising from employee actions.

2. Restrictive Covenants

2.1 Non-Competes

Under Israeli law, non-compete clauses in employment agreements are generally viewed with caution and are rarely enforceable. The Israeli courts have established that the fundamental principle is the employee's right to work and earn a livelihood. As such, non-compete clauses will only be upheld in limited circumstances.

Requirements for Validity

- Legitimate interest: the employer must demonstrate a legitimate interest that requires protection, such as trade secrets, confidential information, or unique business methods. General business knowledge or skills acquired during employment are not sufficient. This is a fundamental requirement.
- Independent consideration: while not an absolute requirement, the provision of independent consideration (such as a special payment or benefit specifically for agreeing to the non-compete) can strengthen the enforceability of the clause. However, even with consideration, the clause must still meet the other requirements. Specific training might also be considered as consideration for the non-compete undertaking.
- Reasonableness: the scope of the non-compete must be reasonable in terms of duration, geographic area, and the type of restricted activity. Overly broad or vague restrictions are likely to be struck down.

- Balance of interests: courts will weigh the employer's need for protection against the employee's right to work. If the restriction is found to be excessive or unnecessary, it will not be enforced. The size and strength of the employer will also be considered.

Enforcement

The burden of proof is on the employer. If the clause is found to be too broad or not justified by a legitimate interest, the court might change it and make it smaller or invalidate it.

2.2 Non-Solicits

All types of non-solicitation clauses must be narrowly tailored to protect legitimate business interests. Overly broad or indefinite restrictions are unlikely to be enforced. The courts will balance the employer's need for protection against the employee's right to pursue employment and business opportunities.

- Non-solicitation of employees: non-solicitation clauses that prevent former employees from soliciting or recruiting current employees are generally more acceptable under Israeli law than non-compete clauses. However, they must still be reasonable in scope and duration. The courts will consider whether the restriction is necessary to protect the employer's legitimate interests, such as maintaining a stable workforce or protecting confidential information. It should be noted that it is very difficult to enforce such clauses in practice.
- Non-solicitation of customers: clauses that prohibit former employees from soliciting the employer's customers are also subject to scrutiny. The enforceability depends on whether the employee had significant contact with the customers and whether the restriction is necessary to protect the employer's legitimate interest or confidential information. As with non-competes, the restriction must be reasonable in terms of time, geography, and the nature of the prohibited activity.

3. Data Privacy

3.1 Data Privacy Law and Employment

In Israel, data privacy in the employment context is primarily governed by the Protection of Privacy Law, 1981 (the "Privacy Law"), along with regulations and guidelines issued by the Israeli Privacy Protection Authority (PPA). These laws and guidelines set out the framework for the collection, use, storage, and transfer of personal data, including data relating to employees.

The Privacy Law defines "personal information" broadly, covering any data that can identify an individual, including employees. This includes names, identification numbers, contact details, health information, and more. Employers must collect and process employee data only for legitimate, specific, and clearly defined purposes related to the employment relationship (such as payroll, benefits administration, and compliance with legal obligations).

Employees must be informed about the collection and use of their personal data, including the purposes for which it is collected, how it will be used, and with whom it may be shared. In certain cases, especially where sensitive data is involved or data is transferred to third parties, explicit consent from the employee may be required.

Employers are required to implement appropriate technical and organisational measures to protect employee data against unauthorised access, loss, or misuse. The Privacy Protection (Data Security) Regulations, 2017, set out detailed requirements for data security, including access controls, encryption, and incident response procedures.

Employees have the right to access their personal data held by the employer, request corrections, and, in some cases, request the deletion of data that is no longer necessary for the employer's legitimate purposes.

The transfer of employee data outside of Israel is subject to restrictions. Employers must ensure that the receiving country provides an adequate level of data

protection or obtain the employee's consent for the transfer, unless another legal basis applies.

The use of monitoring tools (such as email monitoring, CCTV, or GPS tracking) in the workplace is subject to strict limitations. Employers must balance their legitimate interests with employees' right to privacy and must provide clear notice to employees regarding any monitoring activities.

The PPA is responsible for enforcing data privacy laws in Israel. Non-compliance can result in administrative fines, civil liability, and, in some cases, criminal sanctions.

4. Foreign Workers

4.1 Limitations on Foreign Workers

Overview

Israeli law imposes a range of limitations on the employment of foreign workers, reflecting a balance between the needs of the local labour market, the protection of foreign workers' rights, and the state's interest in regulating immigration and employment. The main legal framework governing the employment of foreign workers in Israel is the Foreign Workers Law, 5751-1991, along with various regulations, government decisions, and sector-specific arrangements.

Sectors Permitted to Employ Foreign Workers

Foreign workers are primarily employed in specific sectors, such as:

- construction;
- agriculture;
- nursing and caregiving; and
- hotel and hospitality industry (to a limited extent).

A smaller number of foreign workers are employed in specialised categories requiring expertise such as:

- senior representatives of foreign or international companies;
- senior staff in foreign aviation or shipping companies;
- lecturers or researchers in higher education institutions;

- medical professionals undergoing training or specialisation in hospitals;
- diamond workers;
- foreign photographers or journalists;
- foreign artists;
- representatives of foreign military forces; and
- experts with unique skills not available in the local workforce.

Employer-Specific Permits

Foreign workers are generally tied to a specific employer and position. The permit to employ a foreign worker is non-transferable, meaning the worker cannot freely change employers without going through a formal process and receiving approval from the Population and Immigration Authority.

Duration of Employment

There are strict limitations on the duration of employment for foreign workers, as set out below.

- In most sectors, foreign workers may be employed for a maximum cumulative period of 63 months (five years and three months).
- In the care sector, exceptions may apply, especially if the worker is caring for a specific individual with special needs.
- After the maximum period, the worker must leave Israel and may be subject to a "cooling-off" period before becoming eligible to return.

Wages and Working Conditions

Foreign workers are entitled to the same minimum wage and basic employment rights as Israeli workers, including:

- minimum wage;
- overtime pay;
- paid vacation and sick leave;
- severance pay;
- social benefits (such as pension contributions, in certain cases);
- travel Expenses; and
- annual recreation allowance.

Employers are also required to provide suitable housing, health insurance, and, in some sectors, meals or meal allowances.

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Prohibition on Recruitment Fees

It is illegal for employers to charge foreign workers any recruitment fees. Israeli local private recruitment agencies may only charge placement fees for foreign workers in the care and agriculture sectors, and only up to a nominal amount set by law. Foreign recruitment agencies operating outside Israel may charge placement fees up to a maximum amount established by applicable regulations. Excessive fees are considered exploitation and are subject to criminal and administrative penalties.

Enforcement and Sanctions

The Population and Immigration Authority, together with the Ministry of Labor, Social Affairs and Social Services, is responsible for enforcing the laws and regulations regarding foreign workers. Sanctions for violations include:

- administrative fines (for example, up to NIS10,000 for the employment of each illegal foreign employee);
- criminal prosecution (for example, up to one year of imprisonment or a fine of NIS52,500 for each offence of employing an illegal foreign employee);
- disqualification from employing foreign workers in the future; and
- deportation of illegally employed workers.

4.2 Registration Requirements for Foreign Workers

Overview

The employment of foreign workers in Israel is subject to a comprehensive registration and permit system, designed to ensure that only authorised workers are employed and that their rights are protected.

The process for obtaining a permit to employ foreign workers in Israel varies according to the sector in which the workers are requested. Each sector has its own procedures, requirements, and authorities involved. All applications across all sectors require payment of various fees as determined by regulations.

Care Sector

- Permit applications are submitted via licensed agencies to the Population and Immigration Authority.

- The patient must meet eligibility criteria and provide medical documentation.
- If approved, a B/1 visa is issued for the worker, tied to the specific patient.
- Permits are renewable: caregivers may change employers within the sector under certain conditions.

Agriculture Sector

- Permits are allocated annually by quota.
- Applications are mainly made through authorised agricultural associations.
- Workers are recruited via bilateral agreements.

Construction Sector

- Employers must register and apply through authorised manpower corporations.
- Workers are recruited from countries with bilateral agreements.
- Allocation is project-based.
- The Population and Immigration Authority sets both a minimum and maximum number of foreign worker permits that each corporation must request for each permit year.

Expert Workers

- Employers apply online to the Population and Immigration Authority for a permit and a B/1 expert visa.
- The expert must have unique skills not available in Israel; higher salary requirements apply.
- Permits are usually for up to two years, extendable to a maximum of 63 months.
- Family members may accompany the expert worker in certain cases.
- Before submitting the application, it is important to check that the foreign worker's passport is valid for at least 18 months and that the foreign worker is not already in Israel (unless it is a permit extension).

Ongoing Reporting and Record-Keeping

Employers must maintain detailed records of each foreign worker, including:

- employment contracts;
- wage payments;
- social benefit contributions;
- health insurance documentation; and

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- housing arrangements.

Employers are required to report any changes in employment status, such as termination, resignation, or transfer to another employer, to the authorities within a specified period.

Renewal and Termination Procedures

- **Renewal:** permits and visas must be renewed annually, subject to continued compliance with all legal requirements and within the overall sector quota.
- **Termination:** upon termination of employment, the employer must notify the authorities, and the worker is generally required to leave Israel unless authorised to transfer to another employer within the same sector.

5. New Work

5.1 Mobile Work

Regulation, Privacy, and Safety

The rise of mobile and remote work in Israel, accelerated by technological advances and societal shifts during and after the COVID-19 pandemic, has attracted increasing legal attention, although comprehensive statutory regulation remains limited. Mobile work is generally permitted under Israeli law, but employers must comply with various legal obligations drawn from data protection, occupational safety, and social security frameworks.

Data Privacy

The Israeli Privacy Protection Authority published guidelines for monitoring employees' remote work on 17 October 2023 (the "Guidelines"). Such monitoring is subject to the provisions of the Israeli Privacy Protection Law, 1981 and the regulations promulgated thereunder. The seminal case regarding monitoring employee use of computers in the workplace is Labor Appeal (National) 90/08, *Tali Isakov Inbar v State of Israel – Commissioner for the Women's Work Law and Others* and the Guidelines extensively reference this case. Employee monitoring during remote work must be necessary, proportionate, and aimed at legitimate business purposes. Employers are required to inform employees in advance about any monitoring meas-

ures and in most cases obtain informed consent, preferably in writing. High-impact monitoring tools, such as screenshots, keystroke logging, eye tracking, webcam use, geo-location or audio capture, are considered highly invasive and may only be used in extreme cases when less intrusive alternatives are unavailable and a vital need for such monitoring has been identified. Monitoring should be strictly limited to working hours and work-related systems; employers must avoid collecting information unrelated to job performance, particularly any data about employees' private or family life. Data minimisation and security principles must be followed, including limiting access to the data obtained by monitoring, clearly defining retention periods, and ensuring that unnecessary or sensitive data is not retained or processed. The collected data may only be used for pre-defined and legitimate reasons (purpose limitation).

Occupational Health and Safety

The Occupational Safety and Health Ordinance [New Version], 1970 and related regulations traditionally apply to physical workplaces. While not explicitly extended to remote work, employers are advised to conduct risk assessments and ensure ergonomic and safe working conditions for employees working from home. This includes guidance on workstation setup, work-hour limitations, and rest breaks to avoid fatigue or burnout. Accidents that might occur while working from home will likely to be recognised as work accidents.

Social Security and Labor Rights

Remote and mobile workers remain fully covered under Israel's National Insurance Law, and their entitlements under general labour law, such as minimum wage, annual leave, and social benefit, are unaffected by work location. However, enforcement challenges may arise concerning hours worked and employee supervision, prompting many employers to adopt electronic attendance systems and transparent policies.

Sexual harassment prevention law and regulations also apply to remote working environments, especially the use of Zoom or similar platforms. Employers are advised to update their sexual harassment preven-

tion policies to include rules on conduct while working remotely.

5.2 Sabbaticals

Framework and Limitations

There is no statutory entitlement to sabbatical leave in Israel's private sector. However, sabbatical arrangements may be provided through:

- individual employment contracts;
- CBAs; and
- employer policies.

In the public and academic sectors, sabbaticals are more formalised. For instance, university faculty members are often entitled to sabbatical leave every six years, typically for research and academic development, governed by institutional rules and CBAs.

Private-sector sabbaticals are typically unpaid unless otherwise agreed. Employers are not legally obligated to reinstate an employee following unpaid leave unless otherwise specified by contractual terms or a CBA. However, if an employer decides to formally terminate the employment, a hearing must be conducted prior to making such a decision.

During unpaid sabbaticals, employees are not covered by employer-paid social benefits (except for social security payments for the first two months. However, voluntary continuation of certain insurance schemes (eg, health or pension plans) may be arranged.

An employer must receive the consent of the employee in order to place them on unpaid leave. Forced and consensual leave of absence might result in payment of the employee's salary or be considered as termination of employment.

5.3 Other New Manifestations

Other New Manifestations of Work

The concept of "new work" in Israel encompasses evolving trends in workplace organisation, reflecting global shifts toward flexibility, autonomy, and innovation. Common emerging practices include the following.

Desk sharing and hot desking

These are increasingly common in hybrid workplaces, especially in tech and coworking spaces. Although not directly regulated by law, employers should ensure compliance with data privacy (eg, device security) and ergonomics requirements. A clean desk policy is often used to mitigate the risk of data breaches.

Hybrid work models

Many Israeli companies now offer hybrid work as a standard arrangement, blending remote and on-site work. These models are typically governed by internal policies or employment agreements, with key legal implications relating to working hours, supervision, and employee monitoring.

Digital nomadism and cross-border work

While not yet widespread, the trend of employees working remotely from abroad raises complex legal issues regarding tax residency, work visa permit, labour law applicability, and employer liability. Companies must evaluate such arrangements on a case-by-case basis, including potential extraterritorial regulatory exposure.

6. Collective Relations

6.1 Unions

Employee Unions in Israel: Structure and Recognition of Employee Unions

In Israel, employee unions operate either as sector-specific entities - representing distinct professional groups such as physicians or senior academic staff - or as multi-sector organisations encompassing various professions.

The criteria for recognition as a legitimate employee union are not prescribed by statute but have been developed through Israeli labour court jurisprudence.

To be recognised as a labour union, an organisation must demonstrate certain characteristics:

- it must possess a permanent and stable organisational structure;
- it must operate democratically;

- it must have a valid and enforceable constitution or articles of association;
- membership must be voluntary; and
- one of its primary objectives must be to regulate terms of employment through CBAs.

For a union to attain the status of a “representative union” at a particular workplace, at least one-third of the employees must be registered members of the union. In cases where multiple unions are competing for representation, the union with the largest number of members at that workplace will be recognised as the representative union.

Israel is home to three principal general-purpose employee unions, the largest being the New General Federation of Labor (commonly known as the “New Histadrut”). In addition, there are several professional unions representing specific sectors such as education, medicine, and civil employees of the military. Approximately 25–30% of the Israeli workforce is unionised.

At the enterprise level, unions typically establish a workplace committee comprised of employees. This committee acts as the union’s representative body within the organisation and serves as a liaison between employees and management. Together, the union and the workplace committee engage in negotiations with the employer on matters concerning employment terms and workplace conditions.

In the event of a labour dispute, and unless prohibited by an applicable CBA, a union is entitled to declare a labour dispute. Following a 14-day cooling-off period, the union may initiate a strike or take other forms of industrial action.

6.2 Employee Representative Bodies

Representative Bodies and Internal Representation

Under Israeli labour law, only unions are recognised as the legitimate representative bodies of employees, and they act through the workplace committees. These committees do not possess independent authority to negotiate or execute CBAs without the involvement of the union.

An exception exists for so-called internal representative bodies that function as independent employee representatives without affiliation to a general or professional union. However, Israeli labour courts generally view such bodies with scepticism, often suspecting them to be employer-driven or lacking genuine independence. For such a body to be recognised as a valid representative entity, it must not only meet the same requirements as a traditional union but also prove its authenticity as an employee-driven organisation.

6.3 Collective Bargaining Agreements

The regulation of CBAs in Israel is governed by the Collective Agreements Law, 1957. Under this statute, only an established labour union may lawfully enter into a CBA on behalf of employees.

There are two types of CBAs:

- a special collective agreement, which is executed between a union and a specific employer; and
- a general or sectoral collective agreement, which is executed between a union and an employers’ association representing multiple employers in a given industry or on a general matter such as travel expenses.

Typical CBAs include several key components:

- financial provisions, setting wages and other monetary benefits;
- organisational provisions, outlining rules on working hours, employment policies, protections against termination, seniority, and dispute resolution mechanisms;
- duration, usually specifying a term of three to five years;
- industrial peace clauses, in which the union agrees to refrain from rising new demands, strikes or labour disputes on issues addressed in the agreement; and
- dues collection, which authorises the employer to deduct union dues and other organisational payments (including committee dues) from employees’ salaries - applying both to union members and, in certain cases, to non-members.

Unless explicitly stated otherwise, CBAs generally apply to all employees within a workplace. In some instances, and as an exception to the rule, a bargaining unit may be delineated within the employer's organisation, in which case the agreement applies only to the employees within that unit.

General (sector-wide) CBAs apply to employees of member employers within the employers' association that signed the agreement. Additionally, the Israeli Minister of Labor has statutory authority to issue an extension order, which broadens the applicability of a CBA to all employers operating within a given industry or sector, regardless of their membership in the signatory employers' association.

7. Termination

7.1 Grounds for Termination

In Israel, an employer is usually required to present a valid reason (motivation) for dismissing an employee. This reason must be presented to the employee as part of a mandatory pre-dismissal hearing process. The motivation for dismissal must be real and not discriminatory or arbitrary. The law does not require a specific list of grounds for dismissal, but dismissal must be based on reasonable and good faith grounds, such as poor performance, misconduct, downsizing, or business needs. The dismissal process is mostly uniform and includes a number of steps:

- the presentation of the reasons for considering dismissing the employee, in a full and extended manner;
- a hearing prior to dismissal, regardless of the reason for dismissal, during which the employee's position and the totality of the circumstances are considered; and
- a post-hearing decision regarding the employee's continued employment.

However, in certain circumstances, the employer may be required to follow additional procedures prior to proceeding with the dismissal; for example, when the employee in question is in a legally protected period (eg, during pregnancy, fertility treatments, illness, military reserve duty) or when the workplace has a

collective agreement that imposes specific provisions for dismissal. Failure to comply with the required procedures or failure to provide a valid justification for dismissal may make the dismissal illegal and expose the employer to lawsuits for unlawful dismissal or a demand for reinstatement.

7.2 Notice Periods

Under Israeli law, both employers and employees are generally required to provide advance notice before terminating employment. The length of the notice period depends on the length of the employee's employment at the workplace and the terms of the employment agreement, subject to statutory minimums. For employees on monthly wages, the minimum notice period ranges from one day per month of work (during the first year) up to 30 days after completing one year of employment. For hourly or daily wage workers, the notice period is shorter and increases with seniority. Notice must be given in writing. By default, employment continues throughout the notice period. In the event of dismissal, the employer may terminate the employment relationship immediately and compensate the employee in lieu of the notice period (in whole or in part). Since, according to Israeli law, the vast majority of employees are entitled to pension contributions in the framework of which the employer also sets aside funds for the severance pay component, employees covered by this legal severance pay arrangement are entitled, at the time of termination of their employment, provided they are entitled to compensation, only to the release of the funds accumulated for them, without any additional entitlement to supplemental funds. In the case of an employee to whom the severance pay arrangement does not apply, the employee's entitlement to severance pay will be examined according to the circumstances (if the employee is entitled to it under the Severance Pay Law, such as in cases of dismissal or certain resignations that are considered equivalent to termination). There is no requirement for external advice or government approval for the termination of employment, except in special cases (eg, protected workers such as pregnant women or workers on parental leave, military reserve duty workers), where prior approval from the Ministry of Labor or the Employment Committee is required. Employers must also comply with all procedural requirements, including holding a hearing

before termination. Failure to comply with the notice or procedural requirements may result in liability for additional compensation.

7.3 Dismissal for (Serious) Cause

Immediate termination, also known as termination due to serious cause, is the immediate termination of the employment relationship without notice or severance pay due to the employee's serious misconduct or a fundamental breach of trust. Under Israeli law, aggravated cause may include acts such as theft, violence, gross disobedience, or other conduct that irreparably harms employment relations. Even in cases of a serious cause claim, employers must follow due process. This includes giving the employee written notice of the allegations, holding a pre-termination hearing where the employee can respond, and considering the employee's explanation before making a final decision. Failure to comply with these procedural requirements may render the dismissal unlawful, regardless of the underlying behaviour. If the immediate dismissal is carried out lawfully, the employee loses their right to advance notice and, in some cases, to severance pay as well. However, if the dismissal is found to be unjustified or procedurally improper, the employer may be required to pay compensation, reinstate the employee, or both.

7.4 Termination Agreements

Termination agreements are permitted under Israeli law and are common for the purpose of formally arranging the termination of employment by mutual consent. While there is no legal requirement for a specific procedure, best practice requires that the agreement be in writing, clearly detailing the terms of the separation, including effective date, financial arrangements (such as severance pay, notice, and additional payments), and any waiver or release from claims. In order for a waiver of claims to be enforceable, it must be specific, clear, and done with the informed consent of the employee – preferably after the employee has been given the opportunity to receive independent legal advice. In most cases, the waiver should also be accompanied by compensation that exceeds the employees' statutory entitlement. General waivers that attempt to release any future or unknown claims may not be recognised by the courts, especially if the employee did not fully understand the implications.

Termination agreements cannot waive statutory rights that are non-waivable, such as minimum wage, pension contributions, or accrued vacation. Any attempt to circumvent mandatory protections may render the termination agreement, or parts of it, unenforceable.

7.5 Protected Categories of Employee

Israeli law provides specific protections against dismissal for certain categories of employees. These include, but are not limited to, pregnant women, workers undergoing fertility treatments, workers on maternity or parental leave, employees in military reserve service (or spouses of reservists), employees who are bereaved parents, and employees on sick leave. The dismissal of such employees usually requires prior approval from the Ministry of Labor/Employment Committee. Dismissal without such authorisation is considered illegal and null and void. Additional protections apply to representatives of workers and trade union activists, whose employment conditions cannot be dismissed or changed due to their representative role without prior approval from the relevant labour authority. These protections are designed to prevent harassment and ensure the effective functioning of employee representation and collective bargaining. Failure to comply with these requirements may lead orders for reinstatement and compensation for the affected employee.

8. Disputes

8.1 Wrongful Dismissal

Grounds for Unlawful Dismissal Claims Under Israeli Law

Procedural defects in the dismissal process

A termination may be deemed unlawful if the procedure was flawed, for instance, if the employee was not given a proper pre-dismissal hearing (known as a *Shimua*) or if the hearing was conducted improperly. Examples include failure to provide a written notice specifying the reasons for the hearing, or evidence that the decision to terminate had been made prior to the hearing (eg, a replacement was hired before the hearing).

Dismissal during protected periods

Terminations are restricted during specific protected periods, such as pregnancy, maternity and parental leave, the 60 days following the end of such leave, fertility treatments, periods of illness during which the employee is entitled to sick pay, military reserve duty and the period following such duty.

It should be noted that each situation specified above has criteria for the application of the restriction on dismissals, for example, seniority at the workplace, duration of reserve duty, absences due to fertility treatments, etc. Therefore, each situation must be examined to determine whether a restriction on dismissal applies, according to the personal circumstances of each employee.

Dismissals for improper reasons prohibited by law

A dismissal may be deemed unlawful if it was carried out for improper reasons prohibited by law, for example, due to an employee's membership or activity in a labour organisation, for exposing corruption, or for reasons that constitute wrongful discrimination prohibited by law.

Legal Consequences and Remedies

In cases of wrongful termination, the employer is generally liable for compensation. This may include:

- statutory damages under specific laws (eg, the Women's Employment Law entitles eligible employees to compensation equal to 150% of their salary for the protected period);
- non-pecuniary damages for mental distress, as determined by court based on the severity of the violation; and
- compensation for proven economic loss, where the employee demonstrates and quantifies actual financial damage.

In rare and exceptional cases, the court may grant reinstatement - an enforcement remedy obliging the employer to return the employee to work - where the procedural flaw is so severe that the termination is deemed void. Reinstatement is subject to a prompt request from the employee and the absence of compelling reasons against reinstate. It may be granted in addition to financial compensation.

8.2 Anti-Discrimination

Discrimination Claims

Under Israeli law, employees and job candidates may file discrimination claims in a wide range of employment-related matters. These include recruitment, terms and conditions of employment, promotions, training and professional development, termination of employment, and benefits or payments related to retirement.

Grounds for prohibited discrimination claims may be based on alleged discrimination due to one or more of the following characteristics:

- sex and gender;
- sexual orientation;
- marital status;
- pregnancy;
- fertility treatments;
- parenthood;
- age;
- race, religion, nationality, or ethnic origin;
- place of residence;
- political or philosophical belief;
- military reserve service;
- refusal to work on the Sabbath (even if not for religious reasons); and
- disability of the employee or of a close family member.

Burden of Proof in Discrimination Claims

Unlike the general legal principle in civil litigation ("he who asserts must prove"), discrimination cases under labour law are subject to an eased burden of proof in favour of the claimant, including the following.

- If the plaintiff proves that their actions or behaviour were not grounds for dismissal or that the conditions set by the employer regarding employment, promotion, working conditions, training, and retirement payments are met in their case, the burden of proof shifts to the employer to prove that they did not act discriminatory toward the plaintiff in one or more of the above matters.
- In addition, if the plaintiff proves that the employer demanded information from them on a subject in which discrimination is prohibited (for example, information about pregnancy planning or fertility

treatments), the burden will shift to the employer to prove that they did not engage in prohibited discrimination toward the employee.

Remedies

If the labour court determines that unlawful discrimination occurred, it may grant the following remedies:

- non-pecuniary damages, such as compensation for emotional distress, based on judicial discretion and the severity of the violation; or
- pecuniary damages, if the employee has demonstrated measurable financial loss.

Reinstatement or an injunction to prevent termination may also be ordered, but only in exceptional cases, due to the practical challenges of enforcing continued employment relationships against the will of one or both parties.

8.3 Digitalisation

Digital Service of Process and Remote Proceedings in Israeli Labour Courts

Pursuant to Regulation 161 of the Civil Procedure Regulations, 2018 (the “Civil Procedure Regulations”), which applies to labour courts by virtue of Regulation 129 of the Labor Court Regulations (Procedure), 1991, court documents may be lawfully served via digital means through the official online judicial system, “Net HaMishpat”. In addition, Regulation 161 permits the service of court documents on other parties by email, and in certain cases, even by text message to a mobile phone.

With respect to remote hearings, the labour courts have permitted the conduct of preliminary proceedings and mediation hearings via videoconferencing - particularly during the COVID-19 pandemic, in accordance with temporary emergency regulations enacted for that period. These practices are grounded in the courts’ inherent authority to determine procedural rules necessary to ensure the proper administration of justice.

Moreover, under Regulation 129 of the Labor Court Regulations and Regulation 72 of the Civil Procedure Regulations, witness testimony may be heard via vid-

eoconference, provided the statutory conditions for such testimony are met.

9. Dispute Resolution

9.1 Litigation

Employment Forums

In Israel, there are labour courts, which are a unique judicial body specialising in labour law. This system includes:

- five regional labour courts, operating throughout the country (when a claim is filed with the court located in the jurisdiction of the employee’s workplace or residence in accordance with the rules of local jurisdiction) and
- the National Labor Court in Jerusalem, which serves as an appellate court and also as a court of first instance in cases involving a general collective agreement or disputes between labour organisations and employers.

The labour courts have exclusive authority to hear claims between an employee (or their successor) and an employer (or their successor) that are based on a labour dispute and that do not originate in the Torts Ordinance (except for cases involving trespass on real estate and movable property, breach of contract, and breach of statutory duty). In addition, there are other types of claims that the court has exclusive jurisdiction to hear, even though they are not necessarily between an employee and an employer, which are listed in Section 24 of the Labor Court Law, 1991. For example:

- a claim between an employer and an employee or a job candidate or an employee whose employment has already ended, which is based on negotiations for signing an employment agreement or on the employment agreement itself or on the acceptance or non-acceptance of employment;
- claims between provident funds and employers or between members of the fund;
- claims between parties to a special collective agreement or those who may become parties to such an agreement;
- claims between a labour organisation and its members; and

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- claims arising from defamation involving an employee, employer or officer where the cause is in connection with a labour dispute.

Class Action

The labour courts have the authority to hear class actions related to the first three grounds mentioned above, including:

- claims between an employee and an employer based on a labour dispute;
- claim arising from negotiations of an employment contract or regarding the contract itself, or the acceptance or rejection of employment by an employer; and
- claims between a collective bargaining unit and employers or member of the collective bargaining unit.

Representation

Representation in the labour courts is not fundamentally different from representation in the civil courts. However it should be noted that the labour courts are not usually subject to the rules of evidence and that the court has broad discretionary authority to handle any matters not regulated by the Labor Court Regulations (Procedures), 1991, in the manner it deems most appropriate to do justice. The courts have interpreted the rule as directing them to follow the civil procedures used in civil courts.

9.2 Alternative Dispute Resolution

Arbitration in labour law is possible in Israel and is referenced in the Labor Court Law of 1969. Section 28 of the law states that the labour court will have the same powers as a civil court in arbitration matters and the exclusive jurisdiction to hear claims resulting from an arbitration award.

However, according to case law, the scope of arbitration in labour law is very limited, and it is not possible to entrust arbitration with resolving a dispute concerning rights arising from a cogent provision in law or in a case. For example, arbitrators cannot decide on issues such as:

- the existence of an employment relationship;

- the existence or denial of mandatory rights (eg, annual leave, sick leave, minimum wage, prohibition on wage deductions, convalescence pay, pension provisions);
- factual decisions that impact statutory rights, such as resignation or dismissal and the circumstances of the resignation.

It was also determined that claims concerning the rights granted to an employee by virtue of the Whistle-blower Protection Act or the Sexual Harassment Prevention Act are also considered mandatory (cogent) rights that should not be referred to arbitration for a decision.

This means that even if a written agreement has been drawn up and signed by the parties stipulating that all or part of their disputes between will be resolved through arbitration, the agreement is not valid in so far as it concerns matters and issues governed by mandatory protective legislation.

On the other hand, issues that are not governed by protective legislation, for example, the interpretation of an agreement related to contractual rights that originate from agreements rather than mandatory legal provisions or commercial disputes (eg, regarding options), can be referred to arbitration. In such cases, an arbitration clause in the employment agreement will be considered valid. Arbitration clauses are generally included in collective agreements, where the parties - the employers and the representative organisation - often choose to submit disputes regarding the interpretation of the agreement and its implementation to arbitration. These arbitration clauses are often enforced.

9.3 Costs

Legal Costs

The labour courts have the authority to award legal costs, including attorney's fees, in favour of the party who has won their claim, in whole or in part. The court is granted broad discretion in determining the amount of costs. Unlike the regulations applicable to the civil court system, which stipulate that the costs incurred by the losing party shall not be less than a minimum attorney's fee established by law, the labour court is not bound by a statutory minimum rate. In

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addition, while in ordinary civil proceedings the rule is that actual legal costs must be awarded in favour of the winning party and any deviation from this rule requires justification, the labour courts have a different approach. The labour courts consider it important to preventing an increase in the cost of proceedings concerning labour and social security rights. This approach means the courts tend to award much more moderate costs, which often do not reflect the actual costs incurred.

The court considers a number of factors in determining the amount of expenses to be awarded in favour of the winning party, including the nature of the claim, the grounds of the claim, and the identity of the parties. In cases where the claim concerns rights under protective legislation and involves modest amounts, or raises important public and social questions that deserve examination, the court will tend not to award real costs against the plaintiff, even if the claim is unsuccessful in whole or in part. On the other hand, real costs will not be awarded against the employer if the employee is successful with claim.

Conversely, where the cause of action is based on contractual agreements and involves significant amounts of money, and the dispute is of a more commercial nature, the court will tend to award expenses that are closer to the real costs incurred.

The identity of the parties also has a bearing on the range of expenses awarded. If the plaintiff is from a disadvantaged population group whose ability to access the courts easily is a protected interest, the court will tend to award moderate expenses. On the other hand, if the case involves parties who are both considered sophisticated businesspeople (for example, a CEO and an employing company), the expenses awarded are more likely to reflect the real expenses incurred.

Trends and Developments

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Dafna Shmuelelevich & Co is a boutique labour and employment law firm that exclusively serves private and public sector employers. The firm's highly professional team has accumulated years of experience in advising, representing, and litigating on behalf of major global and local corporations. The firm specialises in collective labour law, including unionisation, collective bargaining, labour disputes, strikes, and collective agreements. It supports employers in implementing strategic organisational changes and represents them in litigation, including class action decertification. Dafna Shmuelelevich & Co also develops

and provides guidance on fair workplace procedures covering sexual harassment, abuse, bullying, retaliation, and discrimination, and conducts investigations while representing employers in related litigation. The firm provides ongoing consultation on complex individual employment matters, such as disputes with senior employees and financial claims, and assists with routine employment issues, including drafting agreements, conducting disciplinary proceedings, internal hearings, and negotiations with regulatory authorities.

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Dafna Shmuelelevich is a leading figure in the labour law field, ranking at the top for many years. Both colleagues and competitors refer to her as “the voice of employers”. She excels in litigation, leading high-profile cases

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Employment Law Emergency Crisis Adjustments: The Israeli Reality

Israel has experienced an ongoing state of emergency since the COVID-19 pandemic, but the real “force majeure” occurred on 7 October 2023. That night, the government declared an “emergency on the home front” and, at various stages of the war, imposed different restrictions on workplaces. One could expect that in Israel, a country often subject to security emergencies, such a declaration would be accompanied by a clear regulation of employment law adaptations. However, this was not the case.

Employers were compelled to address the situation by reaching temporary arrangements with their employees within the emergency limits imposed. It was only after a month that the government took various measures, some with retrospective effect, to establish legal arrangements governing employment relationships.

First stage: declaration of “emergency on the home front” and immediate governmental emergency orders – practical vacuum at the workplace

At the initial stage, the Minister of Defence declares an “emergency on the home front”. This declaration carries several implications:

- restrictions on gatherings, including in workplaces (excluding “essential workplaces”);
- an obligation for employees in essential workplaces to attend work;
- partial or full closure of the education system; and
- additional measures.

At this point, the parties to the employment relationship face uncertainty across a range of issues:

- the possibility of continued workplace activity;
- the employee’s obligation to attend work;
- the employee’s entitlement to wages in workplaces where work cannot be performed; and
- the employer’s ability to continue operations through remote work, etc.

At this stage, before the Knesset (the parliament) has legislated special regulations on employment law during the emergency period, the employer is required,

within the scope of their managerial prerogative, to implement necessary adjustments in the workplace and to formulate temporary arrangements with employees regarding working conditions, subject to future regulation by the state.

This has been the main challenge that employers in Israel have faced on multiple occasions in recent years. The guiding principle is the approximate fulfilment of the employment contract, in light of the circumstances and the options available to the parties.

Second stage: temporary emergency legislation

Alongside governmental emergency orders, Israel adopted Emergency Temporary Legislation enacted by the Knesset, which is in effect for a limited duration and designed to reinforce existing legal changes and strengthen their legitimacy.

For instance, the Emergency Protection of Employees Act (Swords of Iron – Temporary Provision), 2023, provided statutory safeguards against dismissal for employees affected by evacuations, childcare disruptions, or military reserve duty. Additional laws extended deadlines and broadened access to social benefits, such as unemployment payments.

This legislative track complements emergency regulations by maintaining parliamentary involvement and ensuring the state’s accountability during times of national duress.

Third stage: extension orders: consensus-based framework

Extension Orders stem from general collective agreements between the Israeli employees’ union and employers’ associations. Once ratified by the Minister of Labour, some sections of these agreements are extended across sectors.

During the war in Gaza, Extension Orders provided:

- wage compensation for employees displaced due to security-related evacuations;
- protection from dismissal and changes in terms of employment for reservists;
- support for reservists’ families affected by workplace disruptions; and

- partial payment schemes for forced unemployment, co-ordinated with the National Insurance Institute.

This Extension Orders mechanism reflects a more balanced approach, built on mutual negotiation rather than unilateral legislation. However, the effectiveness of Extension Orders depends critically on the pace and success of collective bargaining between the parties. Thus, while offering greater legitimacy, the mechanism may lack immediacy unless supported by pre-existing co-ordination and shared priorities.

Balancing executive agility and legal restraint

The coexistence of unilateral and negotiated mechanisms reveals a core constitutional tension: how to preserve democratic proceedings while enabling swift legal action. Emergency Regulations concentrate governmental authority, often bypassing legislative scrutiny. To remain legitimate, such norms must be time-limited and procedurally anchored.

In contrast, Extension Orders and temporary legislation maintain inclusive decision-making and better reflect real-world needs, thus providing the employees and employers with more practical solutions. These instruments align emergency governance with democratic safeguards, enabling calibrated responses that do not undermine institutional checks.

Conclusion

Through Emergency Regulations, temporary legislation, and Extension Orders, the government, the Knesset, and the social Labour partners have crafted a dynamic system that adapts to crises without compromising core democratic values.

However, these tools do not fully resolve the issues that arise in the workplace in real-time during periods of instability. At the initial and most sensitive stage of the emergency, the employer must make practical adjustments to enable employees to perform their duties as closely as possible to the original terms, subject to the operational needs and Emergency Regulations.

The Evolving Israeli Case Law on Remote Work

Unlike in Europe or other democratic countries around the globe, Israeli legislation does not address remote work. This legislative vacuum is particularly problematic in Israel, where the remote work trend has gained momentum due to recurrent security situations that periodically prevent employees from physically attending their workplaces. In the absence of legislative regulation, the Israeli Labour Courts are developing the jurisprudential framework for remote work on a case-by-case basis.

Is remote work an employee's inherent right?

One of the key legal questions is whether employees have an inherent right to remote work. Regional Labour Courts have ruled negatively. It has been established that, as a general principle, employers retain the discretion and prerogative to determine whether to approve remote work arrangements. However, any managerial decision regarding remote work must be based on reasonable business considerations. Employers are expected to exercise their discretion in good faith, refraining from discriminatory practices or considerations extraneous to legitimate business interests.

After-hours communication: work time or not?

Another recurring question in current case law concerns employees' sporadic availability outside standard working hours, particularly when engaging in remote communication (such as sending emails or text messages). Specifically, does such activity constitute "work time" that entitles the employee to remuneration or overtime compensation?

In one case, a marketing and sales VP claimed entitlement to overtime pay for occasionally responding to messages after work hours and being accessible throughout the day, including weekends. The Israeli Regional Labour Court rejected her claim, noting that Israeli law does not mandate payments for availability alone, especially when the after-hours engagements were sporadic.

Furthermore, the Court refused to adopt a blanket rule that any text message exchange outside regular working hours amounts to overtime. Whether mobile phone activity qualifies as compensable "working

time” depends on multiple factors, including the employment contract, the employer’s awareness of the activity, the necessity of the activity for performing the role, and the extent and frequency of such usage.

In another case, the Israeli Regional Labour Court declared that a few after-hours WhatsApp messages were insufficient to establish the employee’s entitlement to overtime pay. Sporadic messages do not prove that the employee routinely worked significantly extended hours.

In a third case, the court rejected an employee’s claim for overtime payments under a contract that specifically provided for two days of remote work. Based on the evidence, the court concluded that the employers’ business culture allowed flexible working. The employee was not required, explicitly or implicitly, to work outside regular hours, nor was it established that the employer, openly or covertly, encouraged such practices. Moreover, the employee admitted that, with the permission of his managers, he engaged in personal matters and hobbies during the workday, without a clear separation between work and private time.

The ruling is clear: employees engaging in remote work outside designated work hours must demonstrate a significant, substantive, and essential pattern of work to qualify for overtime pay. Casual or minor communication is insufficient, as is the employee’s decision to work overtime instead of their regular working hours.

Reimbursement of remote work expenses and occupational accidents

Another issue pertains to reimbursement of employees’ expenses when working remotely, especially from home, including internet and electricity costs. To date, the Israeli labour courts have ruled that unless the employer has especially agreed to reimburse the employee for these expenses, whether in an individual employment contract or a collective agreement, the employee is not entitled to such reimbursement. On the other hand, employees avoid transportation costs and save on commuting time when working from home.

Another aspect of remote work that Israeli Labour Courts have addressed is whether an accident that occurs at the employee’s home while working can be considered as an occupational accident under the National Insurance Law.

The Court ruled that when an employee works from home, the determination of whether an accident qualifies as an “occupational accident” depends not on the location, but on the existence of a causal link between the accident and the employee’s work. Hence, an accident that occurs in the course of work or in connection with work, even at home or at another location of remote work, may still be classified as an occupational accident.

Conclusion

The development of a legal framework regarding remote work is an ongoing process. Unlike in Europe, the right of employees in Israel to disconnect outside working hours remains unaddressed. To mitigate risks, employers have already included detailed remote work provisions into workplace policies, contracts and collective agreements.

Landmark Ruling on Employee Privacy and Workplace Surveillance

On 26 March 2025, the National Labour Court, in a significant and precedential ruling delivered by its retiring President, addressed the scope of an employee’s right to privacy in the workplace, particularly regarding the use of surveillance cameras. The ruling established new legal criteria for balancing the employer’s managerial prerogative with the constitutional right to privacy under Israeli law.

The case involved a senior manager who had been employed for 18 years at a private equity firm under a personal employment contract. The employer installed nine security cameras throughout the workplace, two of which were positioned in the foyer, capturing frontal and rear views of the plaintiff’s workstation. The stated justification for the surveillance was a prior incident of alleged sexual harassment that could not be substantiated due to a lack of visual evidence.

The employee objected to the camera placement and, after notifying the employer of her intention to resign,

left the workplace and subsequently filed a claim asserting constructive dismissal. She argued that the surveillance constituted an unlawful and continuous infringement of her privacy, resulting in a material deterioration of her employment conditions that entitled her to severance pay and related benefits under Section 11 of the Severance Pay Law.

The Regional Labour Court ruled in favour of the plaintiff, finding that the employer's actions amounted to a severe violation of her right to privacy. The Court determined that the resignation constituted constructive dismissal and awarded her severance in the amount of NIS500,000. It emphasised the lack of informed consent and the employer's refusal to remove or reposition the cameras after objections were raised.

The employer appealed, contending that the lower court's ruling unduly restricted the employer's managerial authority and ability to maintain workplace security. While the National Labour Court ultimately upheld the result - denying the appeal and affirming the award in favour of the employee -, it rearticulated the legal reasoning, introducing a multifactorial balancing test to govern future cases involving workplace surveillance.

Key legal principles established

The National Labour Court clarified that not every instance of workplace surveillance constitutes constructive dismissal. Instead, the analysis must consider whether the employer's conduct resulted in a material deterioration of the employee's working conditions. The Court outlined the following guiding criteria.

- Legitimacy of purpose: surveillance must be conducted for a legitimate and reasonable objective.
- Proportionality: the scope and manner of surveillance must be proportionate to the stated purpose, with less intrusive means preferred.
- Degree of harm to privacy: factors affecting harm include:
 - (a) whether surveillance captures only the employee or a broader area;
 - (b) presence or absence of audio recording; and
 - (c) who has access to the recordings and under what conditions.

- Employee-specific factors: the length of employment and employee status may increase the sensitivity of the privacy intrusion. Changes made during employment are more problematic than pre-existing conditions disclosed at the time of hiring.
- Employer conduct and transparency: consent and consultation are critical. The obligation to inform, and in some instances obtain explicit consent, depends on the severity of the intrusion.

The Court held that although the employer's motive - workplace safety - was legitimate, the implementation was flawed. The surveillance was targeted and continuous, the employee was not informed in advance, and her explicit objection was disregarded. The failure to engage in a meaningful dialogue or explore alternatives rendered the employer's conduct unreasonable and invasive. The lack of consent, in the context of prolonged employment and targeted filming, constituted a material breach of contract.

The Court upheld the finding of constructive dismissal and entitlement to severance. The judgment establishes a controlling precedent in Israeli labour law, requiring employers to carefully assess the necessity, scope, and method of workplace surveillance in light of employee privacy rights. Explicit consent is required in cases of continuous, targeted monitoring, especially when it involves senior or long-serving employees.

Risks Associated with the Broader Certification of Class Actions by Israeli Labour Courts

Class actions in the field of labour law serve as an essential mechanism for enforcing employee rights in a non-unionised workplace. It offers a strong financial incentive for employers to adhere to labour regulations, while encouraging employees to assert their employment entitlements. Nonetheless, this powerful tool also carries significant legal and economic risks, among them an escalation in excessive litigation and increased defence costs for employers.

In Israel, class actions follow a two-stage process, beginning with the certification of a class action, followed by an examination on the merits. Historically, the labour courts tended to decertify employment-related class actions, which led many proceedings to

halt prematurely without reaching substantive consideration.

Lowering the bar: The Supreme Court's shift in certification standards

A landmark judgment delivered by the Israeli Supreme Court in 2022 has significantly reduced the threshold for certification, aiming to allow more employment-related class actions to proceed to substantive review. This jurisprudential shift has been reflected in the Israeli labour courts' recent decisions, including approving motions based on causes that were usually denied.

Expanding frontiers: from economic claims to complex workplace claims

Traditionally, class actions in the labour field have focused on quantifiable economic rights, such as pension contributions and salary deductions.

Today, however, there is a noticeable expansion into more qualitative domains that necessitate complex factual determinations. Recent proceedings have included cases brought by independent contractors of gig economy platforms seeking retroactive classification as employees - a factual context more appropriately addressed through individual proceedings. Other emerging areas include allegations of discrimination and sexual harassment.

This broadening trend introduces both private and public risks. Reduced procedural barriers may lead to an increase in class actions with insufficient prima facie merit, filed by claimants who are inadequately positioned to represent the group.

This phenomenon can also impose undue financial strain on employers defending against weak motions for certification, contribute to the overload of an already burdened judiciary system, and potentially harm the very groups of employees whose rights the proceedings are intended to protect, particularly when litigation is mismanaged.

It should be noted that this trend does not apply in unionised workplaces, as labour courts have also observed. Labour courts generally deny motions to certify class actions, as the union is perceived as the

authorised party to enforce employees' rights and has greater capacity to negotiate necessary modifications to employment conditions.

Labour Law: Attempts to Establish Modern Labour Unions Constrained by a Conservative Definition of "Union" by the Israeli National Labour Court

The Israeli collective labour laws do not provide statutory definitions for key terms such as "a union" or "a strike". Those terms were shaped by case law which defined a set of criteria for what constitutes a "union." Since only a "union" may be legally recognised under Israeli law as a "representative workers' organisation", authorised to conduct collective bargaining with the employer to sign a collective agreement, these criteria effectively serve as threshold requirements for collective representation status.

In practice, Israel has several large trade unions. In contrast to Europe, only in a few specific sectors are there local "work councils" recognised as employee representative bodies, despite being unaffiliated with a traditional union.

The Nokia case: a glimpse into alternative union models

A rare opportunity to adapt a modern unionised entity appeared in the case of *Nokia Israel* in 2025. A large group of employees, opposed to traditional unionisation under the Histadrut (Israel's largest national labour union), initiated a counter-organising effort by forming an internal works council. One of the guiding principles of the council's committee was the preservation of employees' individual employment agreements alongside a collective agreement. The works council gained broad support among Nokia's employees and began engaging in collective bargaining with the employer.

The Regional Labour Court recognised the new entity as a representative union and authorised it to conduct exclusive collective bargaining with the employer. This ruling was seen as a potential shift from traditional union models, offering a framework for the emergence of additional modern employee organisations that operate independently and primarily reflect the employees' preferences, in line with the individual freedom of association.

However, upon appeal, the National Labour Court overturned the decision. It held that Nokia's works council did not qualify as a union because its main objective was not to negotiate a collective agreement addressing core employment conditions.

Legal pushback and the future of employees' representation

In today's evolving labour landscape, legal recognition of emerging organising structures may prove inevitable. Traditional unions often fail to fully represent employees' preferences or address their changing needs. Worker rights can also be advanced through co-ordinated action focused on individual contractual terms rather than comprehensive collective agreements. While Israeli labour courts have not yet accepted such frameworks, practical realities may eventually drive a shift toward recognising innovative forms of representation that are common in other jurisdictions worldwide.

Quasi-Political Strikes in Israel: Legal Foundations and Contemporary Shifts

The legal architecture of strikes

Israeli courts acknowledge the right to strike as a fundamental part of the constitutional right to freedom of association and union membership. Strikes are viewed as a legitimate tool for promoting workers' interests and redressing the inherent imbalance of power between the parties to the employment relationship.

The Labour Disputes Law, 1957, constitutes the principal statutory framework and sets out the requirements for declaring a strike, including a statutory 15 day prior notice, participation in mediation efforts, and specific restrictions applicable to designated essential public services.

Israeli courts have consistently distinguished among three types of strikes.

- Economic strikes typically arise from direct employment-related concerns, which are generally lawful.

- Political strikes intended to protest against shifting government policies fall outside labour law protections.
- Occupying the middle ground, quasi-political strikes aim to express moral or societal concerns and influence changes in government policies that affect tangible employment conditions. Their legitimacy remains subject to legal discussion and is evaluated on a case-by-case basis. Even when the courts approve a quasi-political strike, it is restricted to a limited duration, typically not exceeding several hours.

The trend of political strikes

Over the last two years, there has been a shift in the nature of quasi-political strikes, characterised by work stoppages initiated by labour unions, with support from employer groups. In such cases, both parties unite in their view that a particular government decision runs counter to the public interest, and therefore collaborate in expressing their protest.

This emerging trend gives rise to substantial legal and societal considerations. It calls into question the conventional distinction between industrial action and civic protest. It also raises questions about whether the existing legal system adequately reflects the broader responsibilities that organised labour may assume in a democratic society.

Judicial reluctance and the call for reform in Labour Strike Law

In practice, Israeli labour courts have taken a cautious approach to strikes with a political dimension. In most cases, courts have granted interim or final injunctive relief preventing such strikes. In 2024 and 2025, three different labour courts issued rulings granting motions against strikes protesting judicial reforms, raising concerns over the basic principles of a democratic regime, and even actions regarding the war in Gaza.

Looking ahead, it may be time to consider updating Israel's labour strike laws and rulings to reflect modern realities. When facing exceptional and unique circumstances, particularly when employers' organisations support the union's actions, the courts should adopt a more flexible and responsive stance.



Law and Practice

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Zambelli & Partners has extensive experience in employment law, industrial relations and related litigation, and in-depth knowledge of the legislative and regulatory system governing employment relationships. The firm is made up of professionals with in-court expertise and knowledge of the Italian legislation, in the context of European Union law. As a consultant for industrial, financial and commercial companies and corporate groups, Zambelli & Partners advises clients in matters relating to employment law, trade union law and industrial relations, providing clients

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1. Employment Terms

1.1 Employee Status

The main distinction between blue-collar and white-collar workers is as follows:

- blue-collar workers (*operaî*) collaborate with the employer by performing tasks that are primarily related to the company's production process. Examples include factory workers and manual labourers; and
- white-collar workers perform organisational/administrative functions (eg, office employees, clerks).

Article 2095 of the Italian Civil Code introduces two additional categories of employees.

- *Quadri* This category is intermediate between “*dirigenti*” (executives) and “*impiegati*” (middle managers). They consistently perform functions of significant importance for the growth of the company and the achievement of its targets.
- *Dirigenti* This represents the highest category of employee. As defined by collective agreements, they possess a high degree of professionalism, autonomy and decision-making authority. Their activities are directed towards promoting, co-ordinating and managing the achievement of the company's targets.

1.2 Employment Contracts

The standard employment contract form in Italy is the open-ended or permanent contract. However, Italian

legislation allows employers to enter into fixed-term agreements under certain conditions.

According to Articles 19–29 of Legislative Decree No 81 of 15 June 2015, as subsequently amended, a fixed-term contract can be freely executed (ie, without any specific reason) only if the duration does not exceed 12 months. For contracts exceeding 12 months (in any case, up to a maximum of 24 months), at least one of the following must apply:

- (i) conditions established by national/territorial/company-level collective bargaining agreements;
- (ii) in the absence of the provisions referred to in (i), and in any case only for contracts executed not later than 31 December 2026, technical, organisational or productive reasons identified by the parties; or
- (iii) reasons related to the replacement of other employees.

The main rules of the fixed-term contract can be summarised as follows.

- The original term can be freely extended and the contract renewed in the first 12 months and, subsequently, only if the conditions listed above are met. If those conditions are not fulfilled, the contract will automatically become a permanent contract.
- The original term can be extended up to four times within the 24-month maximum duration. Should the number of extensions be higher, the contract is transformed into a permanent contract from the effective date of the fifth extension.

- Unless otherwise provided for by the collective agreements, the number of employees employed through fixed-term contracts cannot exceed 20% of the number of employees hired under a permanent contract as of 1 January of each year. Failure to comply with this provision entails the payment of a fine, but the fixed-term agreements remain valid.
- The duration of an employment contract can be validly fixed only if the contract itself is stipulated in written form. Otherwise, the clause regarding the fixed-term of employment is null and void, and the relationship is considered to be for an indefinite period of time.

In fact, even if, in general, there is no obligation for the employment contract to be in writing, written form is required for the validity of certain contracts or covenants (eg, fixed-term employment contracts, non-competition agreements or probationary period clauses) or in relation to the burden of proof (such as in case of part-time employment contracts).

Legislative Decree No 104/2022 (*Decreto Trasparenza*), which implements EU Directive 2019/1152, and aims to ensure “transparent and predictable working conditions for employees in Member States”, came into force in August 2022. The Decree regulates employees’ right to information on the essential elements of the employment relationship, working conditions and related protection.

According to the said Decree, the employer must provide the employee with information in writing at the date of hiring or at least within seven days after the commencement of the employment relationship, including, but not limited to:

- the identity of the parties;
- the place of work;
- the registered office or domicile of the employer;
- the date of commencement of employment;
- the initial remuneration and the items that compose it with details of the timing and method of payment;
- the employee’s contractual category;
- level and job title;
- the specific type of contract (eg, fixed-term, permanent), and, in case of fixed-term agreements, the duration;

- the duration of the trial period (if any); and
- the scheduling of normal working hours and any conditions relating to overtime work and its remuneration, etc.

Please note that:

- certain information – ie, the right to receive training provided by the employer, if any; the duration of holidays; the applicable NCBA; the procedure, form and terms of notice in the event of termination by the employer or employee – may be provided within one month of the commencement of work; and
- some information (eg, the duration of the probationary period; the right to receive training; the length of vacation, the notice period, and the bodies receiving social security and insurance contributions) may be communicated to the employee by indicating the relevant legal provisions or the collective agreement, including company-level agreements, that govern these matters.

It is also permissible to make reference to the National Collective Bargaining Agreement (NCBA) governing the employment relationship or to other relevant company documents that are routinely delivered or made available to employees, for more detailed information on these matters.

1.3 Working Hours

Working time is regulated by Legislative Decree No 66/2003 and by the NCBA applied by the employer, as well as by collective agreements entered into at local/company level, if any.

Said Decree provides that:

- normal working hours are 40 per week;
- collective agreements may establish shorter normal working hours and define them based on an average over a period not exceeding 12 months; and
- the average working hours cannot in any case exceed 48 hours, including overtime, in each period of seven days. The average duration is to be calculated over a maximum period of four months, which can be raised by the collective agreements up to six months, or twelve months in case of

objective or technical reasons, or reasons inherent to the organisation of work, specified in the collective agreements.

Italian law provides working hours restrictions for certain categories of employees. For example, pregnant employees and those with children under one year old cannot work between midnight and 6am.

All work exceeding normal working hours is considered overtime.

Article 5 of Legislative Decree No 66/2003 provides that the use of overtime must be limited, and usually, it is voluntary. Collective agreements typically provide the conditions for performing overtime work. In the absence, overtime work is allowed only with the consent of the employee and for a maximum of 250 hours per year.

Finally, overtime is calculated separately. Any increased salary for overtime is typically specified in the collective agreements; alternatively, the collective agreements may entitle the workers to take additional leave in lieu of increased salary.

1.4 Compensation

According to Article 36 of the Italian Constitution, an employee is entitled to be paid in accordance with the quality and quantity of work performed, and payment must be sufficient to guarantee to the employee and his/her family a free and dignified existence.

There is no national legislation that establishes a minimum wage. The minimum wage in Italy is determined by the NCBA's for each category of employee.

Even if there is no NCBA applicable to the company, an employee can still commence a lawsuit to challenge the sufficiency of wages paid. According to Article 2099 of the Italian Civil Code, the judge can determine the fair wage by reference to the salary level provided by the NCBA's commonly applied in the sector of the company's business or similar sectors.

The part of pay exceeding the minimum wage or base salary is called the "super minimum".

Salary increases are typically negotiated at a national level by trade unions and employers' associations.

An additional fixed item of remuneration, named the annual 13th monthly salary, is paid once a year on the occasion of the Christmas holidays. It usually corresponds to one month's remuneration. In addition, some NCBA's may establish a further payment of a 14th instalment, usually paid in June.

Bonuses may be outlined in individual employment contracts or collective bargaining agreements. They are typically based on the performance of the individual and/or the company, and are subject to specific rules.

Employees, especially when at management level, can also receive additional benefits (the so-called "fringe benefits"), the most common of which are company cars, mobile phones and laptops, which may be used exclusively for business purposes or both business and personal use (ie business and personal).

Fringe benefits – whose value changes according to their nature – are a form of payment in kind, and they are subject to tax, social security contributions and insurance contributions. The relevant amounts and procedures vary according to the benefit.

1.5 Other Employment Terms

Article 36 of the Italian Constitution and Article 2109 of the Italian Civil Code provide for employees' right to annual paid vacation. The employee cannot waive this right.

The minimum length of paid vacation is four weeks per year, but the applicable NNCBA may provide for a longer period.

The four-week period can be used for almost two consecutive weeks at the employee's request, and the other two weeks (and, if any, the remaining higher period provided by the applicable NCBA) have to be used within the eighteen months starting from the end of the accrued year. For example, a vacation accrued but not used in 2025 has to be used by 30 June 2027.

Employees are also entitled to eleven days off as public holidays. Almost all the NCBA's provide for an additional day of public holiday (the day of celebration of the patron saint).

As for leaves, below you will find a list of those that the employees are entitled to.

- **Sickness leave:** An employee is entitled to keep their job position for a certain period of time that changes accordingly to each NCBA (the “*periodo di comporta*”). This period is a suspension of the employees’ contractual obligation to carry out their working activity, during which they are entitled to receive their full salary. A portion of the salary is paid by the National Institute for Social Security (*Istituto Nazionale Previdenza Sociale*, INPS), and the applicable NCBA may require the employer to pay the remaining portion. In the case of executives, instead, sick leave payments are fully borne by the employer. In cases where no NNCBA applies to the employment relationship, Article 2110 of the Italian Civil Code states that the length of the protected sick leave period is determined by customary practice or according to equity.
- **Maternity leave:** Mothers are entitled to a paid leave of five months (normally two months before and three months after the child’s birth), during which they have the right to an indemnity from the INPS equal to 80% of their salary; however, almost all NCBA's provide the obligation for the employer to pay the remaining 20%.
- **Paternity leave:** Fathers are entitled to a paid leave of ten days, continuous or otherwise (20 days in case of a multiple birth). During this period, the father is entitled to a daily allowance equal to 100% of his salary.
- **“Alternative paternity leave”:** The working father has the right to abstain from work for the entire duration of the maternity leave or for the residual part that would have been due to the mother in the following situations:
 - (a) if she does not benefit from it;
 - (b) if she dies or is affected by a serious illness;
 - (c) if she abandons the newborn baby; or
 - (d) if the father has exclusive custody of the newborn baby.
- During this period, which is called, the father receives an indemnity same as the mother would.
- **Parental leave:** Each parent, during the child’s first twelve years of life, is entitled to parental leave. The total combined leave available to both parents is limited to ten months, except where the father takes at least three months of leave, whether continuously or in segments. In such cases, the total leave available increases to eleven months. The right to parental leave applies to:
 - (a) mothers, after maternity leave, for a maximum period of six months;
 - (b) fathers, from the birth of their child, for a maximum period of six months, extendable to seven months if at least three months of leave are taken, whether continuously or in segments;
 - (c) single parents, for a maximum period of eleven months; and
 - (d) adoptive parents, within twelve years from the date of adoption, provided it is before the child turns 18
- During the parental leave, until the child reaches the age of twelve, both parents are entitled to receive an indemnity equal to 30% of their salary for a total of three months each; additionally, until the child turns six, this indemnity may be increased to 80% for one month, to be taken by either parent, while a further three months, shared between the parents, may be taken with the 30% indemnity).
- **Marriage:** Any employee, except during the trial period, is entitled to special 15-day paid leave upon marriage. NCBA's can provide for different rules.
- **Disability:** Disabled employees or those assisting disabled relatives are entitled to three days of paid leave per month.
- **Other situations granting leaves:** (medical leave, eg, for drug addiction treatment or blood donation; for political office; personal reasons; and study/training leave).

Under Article 2105 of the Italian Civil Code, “an employee cannot engage in business, either for his/her account or for third parties in competition with his/her employer, or divulge information pertaining to the organisation and methods of production of the enterprise, or use it in such a manner as may be prejudicial to the enterprise”. This provision establishes a

“duty of loyalty” effective as long as the employment relationship exists. According to case law, this duty of loyalty prevents the employee from disclosing or communicating to a third party any confidential information or trade secrets relating to the business of the enterprise, which may have come to their knowledge during the employment relationship. Therefore, the confidentiality obligation automatically follows the employment relationship, and it is not necessary to insert a specific clause which provides such an obligation in the employment contract or subsequent agreements. Disciplinary sanctions (including dismissal) may be applied if the above duties are violated.

In addition, an employer may be able to obtain some relief against an employee who has improperly disclosed or used his employer’s or ex-employer’s confidential information or trade secrets. Such activity by the employee might be considered a criminal offence under Article 623 of the Italian Criminal Code.

Furthermore, the behaviour of the employee after the termination might be considered to be “unfair competition” pursuant to Article 2598 of the Italian Civil Code (eg, an employee setting up a new company using the confidential information obtained through its previous employer). In this case, the employer can ask the court to issue an injunction to stop the activity in competition.

In addition, an unlawful act or a breach of duties might entail the employee’s liability for damages caused to the employer. In this case, the employer should prove the damages, the breach of duties, and that the damage is connected to that breach.

2. Restrictive Covenants

2.1 Non-Competes

According to Article 2125 of the Italian Civil Code, the post-employment non-compete covenants may be deemed valid and enforceable only if they:

- are specified in writing;
- provide for a specific consideration in favour of the employee;
- have a limited scope and geographical extent; and

- have a specific duration that shall not exceed three years (five years for “*dirigenti*”).

That said, parties rarely enter into non-compete agreements for such a long period of time, partly because this can lead to enforceability issues. Therefore, the duration normally agreed is between six months and one year from the termination of the employment relationship.

In order to assess the validity of a non-competition covenant, it is necessary to ascertain whether the combination of its terms and conditions, scope and geographical extent unduly restricts the employee’s ability to secure alternative employment or infringes upon their right to maintain their professional skills.

Case law indicates that the following conditions need to be considered when making such an evaluation:

- the content of the covenant (particularly with regard to the scope and geographical reach, to be assessed jointly); and
- the skills and experience of the employee.

The assessment must also take into account the consideration paid to the employee for their non-competition obligations.

The law does not prescribe a specific amount for this consideration; however, case law requires that the compensation be consistent with the restrictions provided for by the non-competition clause. Therefore, the compensation has to be evaluated on a case-by-case basis together with the other terms agreed (ie duration, scope, geographical reach and the skills and experience of the employee). From a practical perspective, the compensation should be in a range of 20%-30% (or more) of the monthly salary received by the employee for each month of the duration of the obligation.

Non-compete clauses are enforceable provided that the requirements indicated above are met.

The enforceability of the clause does not depend on the reason for termination of employment. Unless it is specified otherwise, it applies to all types of termi-

nation, including dismissal for “just cause” (ie gross misconduct).

2.2 Non-Solicits

There is no legal regulation of non-solicitation of employees and customer restraints. Therefore, such restraints must be clearly drafted and explicitly defined.

There are no requirements in terms of the duration of a non-solicitation restraint. However, this restraint is usually inserted in a non-competition agreement, and therefore, the parties usually agree that this restraint will last for the same duration as the non-competition restraint.

As to the compensation, it is debated whether the above statutory requirement for non-compete agreements would also apply to the non-soliciting covenant.

3. Data Privacy

3.1 Data Privacy Law and Employment

Italy is currently subject to the Italian Data Protection Act (Law No 196/2003), as amended by Legislative Decree No 101 of 10 August 2018, and the GDPR.

Data protection legislation must apply jointly with the employment laws set out in the Workers’ Statute (Law No 300/1970). According to its Article 4, the instruments and equipment that are potentially able to monitor employees are permitted only to the extent they are required for organisational, productive or safety reasons or the safeguarding of company assets, and provided that their use is agreed with the works council or most representative trade unions or authorised by the Labour Office, depending on the specific case.

Such rules do not apply (thus no agreement or authorisation is needed) to the instruments and equipment used by employees for their work (eg, laptop or mobile phone) or to devices that the employer uses to register employees’ access and attendance at the workplace.

In addition, the data and the information collected through such instruments and equipment can be used for all purposes related to the employment relation-

ship, provided that the employees have been adequately informed of how the instruments can be used and how the controls can be carried out, in compliance with data protection legislation.

From a privacy perspective, the Italian Data Protection Authority (DPA) on 1 March 2007 issued some provisions (“Guidelines applying to the use of email and the internet in the employment contest”) requiring data processors to define internal policy for the use of the internet, email and IT equipment and, in general, internal procedures for data protection purposes. The employer should inform employees in advance and unambiguously about any processing operations that may concern them in connection with possible controls. In particular, employers are required to provide information and instructions on the appropriate use of the IT devices supplied and relevant controls (eg, monitoring), if there are any. More specifically, employers must inform their employees about the type of tools being used, as well as the nature of the controls in place.

With reference to email management systems, the 2024 guidelines by the Italian DPA provides that meta-data (ie, technical information automatically generated during email exchanges, such as sender and recipient email addresses, IP addresses of servers, etc) should generally be retained for a limited period typically not exceeding 21 days, unless there are proven needs that justify a longer period.

4. Foreign Workers

4.1 Limitations on Foreign Workers

Every year, the Italian authorities set thresholds for the maximum number of regular work permits that may be applied for (so-called quotas).

However, pursuant to Legislative Decree 286/1998 (the so-called Immigration Act), highly skilled individuals or employees who perform specific activities can apply to stay and work in Italy under an “extra quotas” procedure.

As for highly qualified individuals, the law provides that they shall have the proper educational or profes-

sional qualifications. Alternatively, they should have a so-called blue card issued by another EU member state or have attended professional, civic, and linguistic training in their home country.

Highly qualified employees performing remote work from Italy under the employment of foreign entities (so-called “digital nomads”), when the relevant conditions are met, do not require a work clearance (“*nulla osta al lavoro*”).

4.2 Registration Requirements for Foreign Workers

EU nationals can stay in Italy up to three months from their arrival with no particular requirements. If the period is longer, they must register with the registry office of the city where they settle.

Non-EU nationals can be hired, but their employment is subject to quotas set by ministry decree (unless they are employed for special activities or are highly qualified employees). The employers shall obtain authorisation from the competent immigration desk, which is typically issued within 60 days of the request. Once hired, non-EU employees must apply for a permit to stay (*permesso di soggiorno*) within eight days of entering Italy with a long-term visa.

5. New Work

5.1 Mobile Work

Smart working, is a method of conducting the employment relationship, governed by a mutually agreed-upon contract between the parties involved and subject to notification to relevant authorities. This approach allows for flexible work organisation based on phases, cycles, and objectives, without strict constraints on time or location, leveraging technological tools to accomplish work activities.

These activities may be carried out both within and outside company premises, with no fixed location, provided the legal and collective bargaining agreement limits on daily and weekly working hours are observed. The employer assumes responsibility for the safety and functionality of the technological equipment provided to employees for work purposes. In

turn, employees are entitled to protection against accidents and occupational illnesses, even while working outside company premises and during commutes between home and chosen work location.

The smart working agreement must be formalised in writing for administrative and evidentiary purposes, addressing the specifics of work performed outside company premises, including equipment usage, managerial control, and potential conduct outside company premises warranting disciplinary action. The agreement must also clearly define rest periods and outline technical and organisational measures to ensure employee disconnection from work-related technology.

The agreement may be established for a fixed or indefinite term. In the latter scenario, termination requires a minimum 30-day notice (90 days for disabled workers). For justifiable reasons, either party may withdraw prior to the expiration of a fixed-term agreement, or without notice for an indefinite-term agreement.

The “National Protocol on Smart Working” by the Ministry of Labour and Social Policies, in conjunction with social partners, elaborates on the requirements and specifics of individual smart working agreements.

Crucially, smart workers must receive equitable treatment compared to colleagues performing similar tasks and holding equivalent responsibilities within the same company.

5.2 Sabbaticals

Italian law and NCBA's clearly outline leave for purposes such as study, personal reasons, or holding political office. However, there is no specific legal framework for sabbatical leave. This type of leave is subject to negotiation and ultimately depends on the employer's discretion.

During a sabbatical, employees generally do not receive pay while retaining their job positions. It's important to note that they do not accrue seniority during this time off.

5.3 Other New Manifestations

The emergence of digital platforms and the gig economy is inextricably linked to both globalisation and the digital revolution. While these advancements have enabled sophisticated and technologically advanced work management systems, they have also raised concerns about the lack of protection for gig workers, including limited access to union representation.

Initially, there were two primary perspectives on the legal status of work via digital platforms: one advocating for its autonomous nature and another proposing the creation of a “tertium genus”, an intermediate category between subordination and autonomy. Recently, however, both in Italy and across Europe, there has been a growing trend towards classifying gig workers as subordinate employees. This shift is often based on specific indicators, such as the methods of carrying out work, particularly in cases like food delivery riders.

After the EU directive on platform work (2024/2831) - that must be transposed by December 2026 - entered into force, Italy has passed a delegated law in June 2025 to implement it. The upcoming framework introduces a legal presumption of employment when platforms exercise control, along with stronger rights on transparency, algorithmic management, and data protection.

New technologies often allow for increased employer control and direction over workers' activities. In response, the Italian legal system is moving towards ensuring the protection of subordinate work whenever the worker's autonomy is deemed illusory.

6. Collective Relations

6.1 Unions

The Italian Constitution provides the freedom to form or to join trade unions.

In our system, trade unions are considered unincorporated associations that do not need any authorisation or registration to be recognised. The trade unions' associations are governed by their bylaws, which do not need to be checked by any authority.

Workers have the right to establish trade unions, to join them and to take part in union activities within the workplace.

The infrastructure in Italy for collective employees' representation is organised at two levels: inside and outside the company.

- Outside the company: Trade unions, typically organised by industry sector, are the primary entities. Multiple trade unions representing different industries (eg, food, steel, textile) can join forces to form a “Confederation”. The major Italian trade union confederations are the General Federation of Italian Trade Unions (*Confederazione Generale Italiana del Lavoro*, CGIL), the Federation of Italian Workers Trade Unions (*Confederazione Sindacati Lavoratori Italiani*, CISL) and the Italian Work Union (*Unione Italiana del Lavoro*, UIL). Such confederations bring together different national trade unions. In principle, each national trade union brings together the trade unions organised at the regional, provincial or municipal level. The trade unions at the national level are those involved in the execution of the NCBAs. They also have some information and consultation rights.
- Inside the company: the work councils.

The prominent union organisations within the workplace are the company-level trade union representation (*rappresentanze sindacali aziendali*, RSA) and the unified trade union representation (*rappresentanze sindacali unitarie*, RSU).

6.2 Employee Representative Bodies

In Italy, trade unions have the option to establish either an RSU or an RSA within a company. Therefore, a trade union that decides not to establish an RSU maintains the right to set up an RSA (provided that the requirements mentioned below are met). On the other hand, trade unions that wish to participate in the election of an RSU have to formally waive the right to establish an RSA within the same company.

- Article 19 of the Worker's Statute states that an RSA may be formed through the initiative of the employees in plants with more than 15 employees within the trade union associations that:

- (a) have executed the collective agreement (at any level) applied by the company; or
- (b) participated in the bargaining process concerning the collective agreement (at any level) applied by the company, even if they did not execute it.
- The RSA is usually appointed by the territorial trade union associations (without a general election by the workers).
- An RSU can be formed in plants with more than 15 employees. The members of such union organisations are elected directly by the workers. In fact, such union organisations were introduced in order to allow the workers to choose their internal representatives within the works councils in a more democratic manner than the RSA.

The key function of the RSA/RSU is to negotiate with the employers at the company level, while also being entitled to specific information/consultation rights (such as in the event of collective redundancy, transfer of business, etc).

6.3 Collective Bargaining Agreements

Collective bargaining agreements in Italy primarily take place at two levels: at the industry/national level – the most important one – and the company or, sometimes (very rarely), territorial level.

In Italy, for almost every industry sector there is a national collective bargaining agreement that regulates the individual employment relationship (eg, trial periods, notice periods in case of termination, leave of absence, working time, contractual levels, minimum salaries, annual leave, sickness leave, etc).

Nevertheless, in principle – and with certain limitations by case law – the employer is free not to apply any NCBA to its employees or, in any case, to choose the NCBA to be applied (ie, it does not have to apply the NCBA of the specific sector in which the company operates).

The collective bargaining agreements at the company level aim to provide more tailored provisions to suit the type of business and activities carried out by the relevant company. They therefore may delve into greater detail on certain aspects of the employment relation-

ship (eg, working time, company canteen, disciplinary measures, etc).

7. Termination

7.1 Grounds for Termination

Termination shall be communicated in writing and should contain the relevant reasons. Any termination delivered in the absence of such requirements is ineffective.

There are various procedures to be followed depending on the type of termination, the size of the company and the date of hiring of the employee.

- Disciplinary procedure: The employer must promptly provide the employee with a written description of the objectionable behaviour or conduct. The employee has the right to respond – orally or in writing – within five days (or a longer timeframe set out in the applicable NCBA) through a so-called justification letter. The employer can terminate the employment relationship following:
 - (a) the employee's failure to respond within the said five-day period (or longer timeframe set out in the applicable NCBA); or
 - (b) immediately following the receipt of the justification letter.
- Procedure for dismissal for objective reasons: The employer must communicate in advance its intention to proceed with individual dismissal to the Labour Office of the employee's workplace, copying the involved employee and explaining the reasons for the termination. This procedure applies only to the dismissal of employees (not having the role of "*dirigenti*") hired before 7 March 2015 and employed by companies with more than fifteen employees in a single business unit or more business units within the same municipality (*comune*) or again more than sixty employees across all Italian territory. Within seven days from the receipt of the above communication, the Labour Office summons the parties before the Conciliation Office for a meeting in which the parties will attempt to reach an agreement. The procedure will terminate not later than twenty days from the day on which the Labour Office sent the summons.

Should the parties fail to reach an agreement or, in any case, after seven days have elapsed without any summons by the Labour Office, the employer can serve the dismissal.

Collective Dismissals

Collective dismissals are triggered if all of the following conditions are satisfied:

- the company employs more than 15 people; and
- the company intends to dismiss at least five employees, within 120 days, in the same production unit or in a number of units within the same province.

The employer should notify the staff representatives (if any) and the relevant (external) trade union of the decision to proceed with the collective dismissal. If there are no staff representatives, the notification has to be sent to the trade unions of the sector that is most representative at a national level. The procedure provided by the law lasts a maximum of 75 days. The first phase of the procedure is carried out with the unions and should be completed within 45 days (23 days if the number of employees involved is less than ten) from the delivery date of the communication starting the procedure.

If the parties fail to reach an agreement, there is another phase before the employment office. This second phase cannot last longer than 30 days (15 days if the number of employees is less than ten).

The dismissals may be served within a period of 120 days from the conclusion of the procedure unless the parties have agreed on a longer term.

The collective dismissal procedure also applies to executives (*dirigenti*), but it does not apply to fixed-term workers and temporary workers.

Effective as of 1 January 2022, an additional information and consultation procedure – to be triggered 180 days before the statutory one by employers staffed with 250 or more employees (except for those which meet certain requirements; for example, they are facing a financial crisis) – has been established.

This procedure applies whenever the above employers intend to:

- shutdown a production unit, thus fully decommissioning the relevant activities; and
- dismiss at least 50 employees owing to the above shutdown.

Within such a procedure, the employer – among others – must draft and supply to the unions and public bodies a plan whereby it has to specify those measures which are planned to be adopted to mitigate negative consequences on redundant employees (eg, recourse to social shock absorbers, payment of an incentive to leave to employees who “accept” to be dismissed, measures aimed at their professional re-qualification) and to clarify if there are potential acquirers for its business or an undertaking hereof.

A meeting among the employer, the unions and public bodies, which is aimed at the joint examination of the plan, must be scheduled.

Failure to trigger the above additional procedure entails the invalidity of the dismissals (either collective or individual ones) served by the employer.

7.2 Notice Periods

The notice period – which is provided only in case of dismissal for justified reasons – varies depending on the NCBA applied by the employer and on the seniority and level of the employee.

The employer can provide payment in lieu of notice.

In each case of termination (even for resignation or gross misconduct), the employee is entitled to:

- indemnity in lieu of holidays and leave accrued but not used;
- severance pay (the “*trattamento di fine rapporto*”, or TFR), that corresponds to about 7.41% of the overall remuneration earned from time to time by the employee during the employment relationship; this amount is typically set aside annually on the company’s balance sheet, unless the employee has chosen to transfer it to a specific complementary pension fund; and

- the pro-rata amount of the supplementary monthly salary (if any).

The above amounts are paid on top of the indemnity in lieu of notice (if due by the employer).

There are no specific procedures to be followed for the payment of the above indemnities.

7.3 Dismissal for (Serious) Cause

Dismissal for “just cause” occurs when a situation arises that makes it impossible to continue the employment relationship, even temporarily. The applied NCBA usually provides some examples of reasons for dismissal that can be considered a “just cause”. Gross misconduct would normally include theft, serious insubordination, unfair competition, disclosure of trade secrets, unjustified and repeated absences, as well as any other behaviour which undermines the fiduciary relationship with the employer.

The employer must follow the procedure provided by Article 7 of the Workers’ Statute, namely:

- provide the employee with a letter describing the defaults committed by the employee;
- await the justifications, if any, which are to be provided by the employee within five days (or a longer timeframe set out in the applicable NCBA); and
- serve the dismissal letter.

The dismissal is effective from the day on which the disciplinary procedure commenced, and the employee is not entitled to a notice period.

7.4 Termination Agreements

Termination agreements usually include waivers from both parties. The agreements leading to termination of the employment relationship by mutual consent of the parties are admissible, on condition that the settlement is signed in front of a trade union, labour council or labour court.

Furthermore, according to Article 2113 of the Italian Civil Code, where the subject matter of the waivers/settlement concerns the individual’s employment rights arising from mandatory provisions of law or collective agreements or arrangements relating to

the employment relationship, such waivers will be invalid unless the agreement is signed before one of the competent above-mentioned bodies. If not signed before such bodies, the waivers/settlements can be challenged by the employee within six months from:

- the date of termination of the employment; or
- from the date of the settlement if signed post-termination of employment.

The employer does not have to offer the employee consideration in exchange for:

- agreeing to enter into a settlement; or
- in order to obtain an effective waiver of claims/withdrawal from initiated litigation.

However, this is very common in practice as an incentive to obtain the employee’s consent to the agreement.

7.5 Protected Categories of Employee

The main protected categories of employees have been outlined below.

- Mothers and pregnant women: Women cannot be dismissed from the beginning of the pregnancy until one year after childbirth; a dismissal within this period would be null and void unless:
 - (a) the employer has completely ceased its activity;
 - (b) there is gross misconduct; or
 - (c) the termination is due to an unsuccessful probationary period or the expiry of a fixed-term contract.
- Marriage: The above protection also applies to women in the period from the day of the public notification of marriage until one year after the marriage.
- Women: A company cannot make redundant a percentage of women higher than the percentage of women employed in the job category concerned.
- Disabled employees: The dismissal of a disabled employee is voidable if, at the time of termination, the number of remaining disabled employees is less than the quotas prescribed by law for this category of employees.

There is no legal prohibition against dismissing an employee representative. Under Article 18 of the Workers' Statute, if a union representative initiates a lawsuit to contest an employee's dismissal, a labour court may, upon the joint request of both the dismissed employee and their union, order the employee's immediate reinstatement on a precautionary basis. This can occur before a final decision is reached if the court finds that the evidence presented by the employer to justify the dismissal is irrelevant or insufficient. The applicable NCBA may provide further protection (eg, the NCBA for the metal-mechanic sector sets out that the employee representative cannot be dismissed without the authorisation of the union to which they belong).

8. Disputes

8.1 Wrongful Dismissal

Individual Dismissals

Grounds for termination

Italian labour law requires the termination of the employment contract to be justified based on specific reasons:

- just cause – in case of gross misconduct by the employee, which does not allow the continuation of the employment relationship even temporarily;
- subjective justified reasons – whenever the employee breaches a contractual obligation, but the behaviour is not serious enough to warrant dismissal for just cause; and
- objective justified reasons – which concern technical, production-related and organisational reasons.

Null and void dismissal

In Italy, a dismissal is considered null and void in the following circumstances:

- if an employer dismisses an employee verbally;
- if the dismissal is motivated by discrimination or retaliation (eg, for an employee exercising their legal rights, such as reporting workplace safety concerns);
- if an employee is dismissed from the beginning of their pregnancy until one year after their child's birth; and

- if an employee is dismissed because they requested parental leave or got married.

In the above cases, the remedies are the reinstatement of the employee plus the payment of back pay from the date of dismissal to reinstatement, with a minimum of five months' salary.

In all other cases, the applicable sanctions for unlawful dismissal depend on the reasons that lead to the termination of employment, the employee's qualification and date of hiring and the company's size, as follows.

Unlawful dismissals for a just cause or subjective justified reasons (disciplinary dismissals)

Employees hired before 7 March 2015:

- small companies employing up to 15 employees:
 - (a) employees may be entitled to be re-hired with a new employment contract, or to receive an indemnity ranging between 2.5 and 6 months' salary (this indemnity can be increased to up to ten months of salary for an employee with more than ten years of service and up to 14 months of salary as far as employees with twenty or more years of service are concerned, if the company has up to 60 employees in the whole Italian territory and up to 15 employees in a single business unit or more business units within the same municipality ("Comune"));
- large companies employing more than 15 employees:
 - (a) if the "justified subjective reason" or "just cause" is found to be invalid because:
 - (i) the alleged behaviour did not occur; or
 - (ii) a less severe disciplinary action could have been taken on the basis of the applicable NCBA,

the employee may be entitled to reinstatement and an indemnity up to 12 months' salary, plus social security contributions. In all other cases, the employee is entitled to the payment of an allowance ranging between 12 and 24 months' salary.

Employees hired from 7 March 2015:

- small companies employing up to 15 employees:
 - (a) the sole remedy applicable would be the payment of an indemnity ranging between three and 18 months' salary (the previous limit of six months' salary has become ineffective and is no longer applicable even in pending cases due to the very recent ruling No 118 of 21 July 2025 of the Constitutional Court);
- large companies employing more than 15 employees:
 - (a) employees are entitled to be reinstated solely when it is directly proved that the "material fact" upon which the dismissal was based did not occur. (in this case, the reinstatement should be implemented together with the payment of an indemnity up to a maximum amount of 12 months' salary plus social security contributions - in all other cases, the employee will be entitled only to an indemnity, to be established by the labour court between a minimum of six months' salary and a maximum of 36 months' salary).

Dismissals for objective justified reasons (redundancy reasons)

Employees hired before 7 March 2015:

- small companies employing up to 15 employees:
 - (a) the company may be ordered to re-hire the employee with a new employment contract, or pay an indemnity ranging from two and a half to six months' salary (this indemnity can be increased to up to ten months of salary for an employee with more than ten years of service and up to 14 months of salary as far as employees with twenty or more years of service are concerned, if the company has up to 60 employees in the whole Italian territory and up to 15 employees in a single business unit or more business units within the same municipality ("Comune"));
- large companies employing more than 15 employees:
 - (a) if it is determined that the reason for the termination did not occur or is deemed "groundless," the employee is entitled to reinstate-

ment and compensation for lost wages, which is capped at 12 months' salary, along with social security contributions (any earnings the employee received from other sources during this time (*aliunde perceptum*) or potential earnings (*aliunde percipiendum*) will be deducted from this amount).

In all other situations, the employee is entitled to compensation ranging from a minimum of 12 months' salary to a maximum of 24 months' salary.

Employees hired from 7 March 2015:

- small companies employing up to 15 employees:
 - (a) an employee may be entitled to indemnity with a minimum of three months' salary and up to a maximum of 18 months' salary (the previous limit of six months' salary has become ineffective and is no longer applicable even in pending cases due to the very recent ruling No 118 of 21 July 2025 of the Constitutional Court);
- large companies employing more than 15 employees:
 - (a) employees are entitled to be reinstated solely when it is directly proved that the "material fact" upon which the dismissal was based did not occur (in this case, the reinstatement should be implemented together with the payment of an indemnity up to a maximum amount of 12 months' salary plus social security contributions - in all other cases, an employee can be entitled to at most between six and 36 months' salary).

If an employer unlawfully dismisses an employee due to their physical unsuitability for work, the employee will be reinstated and compensated for all lost earnings from the time of dismissal until reinstatement. This compensation will include a minimum of five months' salary, with any earnings the employee received from other sources during that period deducted, if applicable.

Except for the above-mentioned cases, such as retaliatory or discriminatory dismissal, different provisions apply to executives, who, if unlawfully dismissed, are not entitled to reinstatement, but solely to an indem-

nity depending on the length of service and grounds for dismissal pursuant to the applicable NCBA.

Redundancies

A collective dismissal occurs in a large company, staffed with more than 15 employees, when at least five dismissals are served by the employer in a business unit or more business units located in the same province and within a period of 120 days, due to reduction, transformation or cessation of activity.

Employees hired before 7 March 2015:

- law No 223 of 23 July 1991 provides that in the event the employer does not comply with all the steps set forth for the procedure for collective dismissals, the employer shall pay the employee an indemnity ranging between a minimum of 12 months' salary and a maximum of 24 months' salary;
- if selection criteria are violated, the employer shall:
 - (a) reinstate the employee unfairly dismissed; and
 - (b) pay them an indemnity equal to the salary due between the date of dismissal and the date of the effective reinstatement, with a maximum of 12 months' salary.

Employees hired from 7 March 2015:

- the employees shall be entitled only to monetary compensation and this compensation ranges from a minimum of six to a maximum of 36 months' salary (the right to reinstatement is limited to cases where the dismissal was communicated orally);
- even if the employer fails to adhere to the criteria for selecting employees for redundancy, the remedy remains limited to monetary compensation.

Specific sanctions apply to unlawful dismissals related to collective redundancy involving executives. If the dismissal is in breach of either the procedure or the selection criteria, the employer shall pay the executive an indemnity ranging from 12 to 24 months' salary, unless the applied NCBA provides different provisions on the amount of said indemnity.

8.2 Anti-Discrimination

Italian legislation contains both a general principle of equality, which prohibits all forms of discrimination, as well as specific provisions against discrimination.

According to the Italian Constitution, all citizens are equal before the law, regardless of sex, race, language, religion, political opinions, or personal or social conditions.

The Workers' Statute prohibits employment discrimination, specifically those outlined below.

- Discrimination based on union membership or activity: Employers cannot make hiring decisions, dismissals, job assignments, workplace transfers, disciplinary actions, or any other prejudicial actions based on an employee's union membership, union activities, or participation in strikes.
- Direct and indirect discrimination: Both direct and indirect discrimination are prohibited. Direct discrimination occurs when an individual is treated less favourably due to a protected characteristic. Indirect discrimination involves seemingly neutral provisions or practices that disproportionately impact individuals with a protected characteristic.

It is also unlawful to harass a person, violate their dignity or create a hostile, degrading, humiliating or offensive environment due to the person's protected characteristic.

Harassment based on racial or ethnic origin, religion or convictions, disability, age and sexual orientation and sexual harassment constitutes a very serious breach of employment obligations when it occurs within the company, regardless of who commits the harassment. This holds true provided the employer is aware of the harassment and fails to take necessary measures to stop it.

An employee may file a claim for discrimination before the labour court. The court has the authority to order the employer to cease the discriminatory behaviour, to nullify the effects of the unlawful conduct, and to implement measures to prevent future discrimination. Additionally, the court may award damages to

the employee, with the amount being determined at its discretion.

8.3 Digitalisation

Since 2014, the Italian Ministry of Justice has been actively involved in the digitisation of documents, document management, and notification processes, in line with both European Union and Italian regulations, to facilitate the implementation of the telematic civil trial.

As part of these efforts, hearings, including public ones, can now be conducted via remote audiovisual links. This may be ordered by the court when the physical presence of individuals other than the lawyers, parties, public prosecutor, and the judge's assistants is unnecessary. The court's decision must be communicated to the parties at least 15 days before the hearing. Any party may request, within five days of this communication, that the hearing be held in person.

The court will then assess the importance of the parties' presence and issue a non-appealable decree within five days. The Decree may order the hearing to be held in person for those who requested it, while allowing other parties to participate remotely via audiovisual links.

In addition, on 27 October 2020, the Italian Supreme Court signed a Memorandum of Understanding for the Digitisation of Documents in Civil Trials. This protocol enabled the digital handling of documents that had already been filed in hard copy before the Supreme Court.

9. Dispute Resolution

9.1 Litigation

Labour-related matters are subject to a specific trial which is different from the ordinary trial used for civil and commercial matters. In most cases, employees file employment claims on an individual basis. However, there are instances where multiple employees may collectively pursue a single claim against their employer to secure a common right. Furthermore, specific labour claims can be filed by "collective actors". From this perspective, a trade union can bring a claim for

anti-union behaviour, and the Counsellor for Equal Opportunities can commence a lawsuit in the event of collective discrimination in the workplace. The labour trial is subject to a strict procedure. In particular, each party is required to include all the argumentation and evidence requests in the first brief submitted to the court.

9.2 Alternative Dispute Resolution

Labour claims may be submitted to arbitration:

- during settlement negotiations, when the parties may jointly delegate the dispute's resolution to the Local Employment Office through arbitration;
- in accordance with the procedures set out by the applicable NCBA; and
- before an arbitration court specifically appointed upon agreement between the parties.

In principle, arbitration is optional, so each party has the right to bring an ordinary action before the competent labour court. As a consequence, employers may not compel employees to arbitrate claims.

The dispute may be referred to arbitrators only if the parties:

- enter into an arbitration agreement after the dispute has arisen; or
- enter into an arbitration clause before the dispute has arisen.

The above arbitration clause is only valid and effective provided that:

- the applicable NCBA allows the parties to execute such a clause;
- it is entered into by the parties after the expiry of the probation period, or, if no trial period is provided, after thirty days of the commencement of the employment relationship;
- the clause is certified by the competent administrative bodies ("*Commissioni di Certificazione*"); and
- it does not concern issues relating to employment termination.

Labour arbitration is informal, designed to achieve conventional effects akin to a settlement. Disputes

concerning the arbitrators' decision must be brought before the competent labour court within 30 days of notification. The court will review and interpret the arbitration decision as a contract.

Until now, however, the rules on arbitration have not had significant practical application, due to concerns that the employee may not be adequately protected.

9.3 Costs

The general principle is that the losing party in a lawsuit should pay the legal costs of the counterparty (winning side) for the amount decided by the court. However, under particular circumstances, the court can also "offset" the court costs, effectively leading to each party bearing their own expenses.

In addition, the law stipulates that if the successful party had previously declined a settlement proposal put forth by the court, and the amount of that proposal was equal to or greater than the final judgment award, that party might be ordered to pay legal fees.

JAPAN



Trends and Developments

Contributed by:

Hiroaki Matsui, Mari Ueki, Yui Omoteyama and Rei Yamaguchi
AI-EI Law Firm

AI-EI Law Firm was established in 2019, and set up as a Legal Professional Corporation; moreover, it specialises in corporate dispute resolution and labour/employment matters. The name “AI-EI” is derived from the Japanese word “相栄” (pronounced “I-A”), which means mutual prosperity. To realise mutual prosperity with its clients, the firm takes the unrivalled approaches of not only accurately analysing and categorising a large amount of past data (vast experience and knowledge) like “AI” (Artificial Intel-

ligence), but also using the elements of EI (Emotional Intelligence) so that clients’ true needs are properly understood. Thus, clients are guaranteed practical solutions that meet the substance of the dispute – not only from the perspective of economic rationality and efficiency required in business, but also with the humanity and sensitivity required in dealing with people who are the subjects and the objects of disputes and labour issues.

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Introduction

This chapter of the guide aims to provide a comprehensive overview of crucial updates to Japanese employment law by covering various topics including: overtime regulations; equal pay for equal work; transfer orders; worker classification and the New Freelance Act (defined below); harassment regulations; doctrine of free will; and digital money payment of wages. New topics covered in this article include the “2024 Problem” facing the trucking industry, the High Court judgment on salary reductions around retirement, new topics related to employee status under the LSA, new topics related to the New Freelance Act, and digital money payment of wages.

Overtime Regulations

Employers are generally prohibited from ordering employees to work more than eight hours a day or 40 hours per week, and employers must provide at least one day off per week or at least four days off in a four-week period (Articles 32 and 35 of the Labour Standards Act (Act No 49 of 1947) (LSA)).

An exception to the above rule allows for overtime and holiday work if a labour-management agreement is concluded with a labour union representing a majority of workers or a representative of the majority of workers and reported to the local labour standards inspection office (Article 36, paragraph 1 of the LSA). This is known as a “36 Agreement”, and many Japanese companies have concluded and submitted this agreement.

Until the recent amendment, the upper limit of overtime hours under the 36 Agreement was governed by the notice of the Minister of Health, Labour and Welfare (MHLW); however, there was no clear statutory upper limit as long as the 36 Agreement was properly concluded and submitted.

However, with the recent amendments to the LSA in April 2019 (which is part of the Work Style Reform), statutory limits on overtime work were established, along with penalties for violations. Specifically, the limit on overtime under the 36 Agreement is 45 hours per month and 360 hours per year (Article 36, paragraph 4 of the LSA). In special circumstances, the limit is:

- 720 hours per year;
- an average of 80 hours per month over multiple months;
- less than 100 hours per month; and
- up to six months per year (Article 36, paragraph 5 of the LSA).

Although the reform was implemented on 1 April 2019, certain occupations (construction workers, automobile drivers and physicians) were given a grace period until 31 March 2024. After this period, the regulations on the upper limit of overtime work apply to these occupations as well. In particular, the introduction of the regulations on the upper limit of overtime work for truck drivers in the automobile driving business, effective 1 April 2024, has had a significant impact on logistics, such as a reduction in the amount of cargo

that can be transported per day, and this is referred to as the “2024 Problem”.

Furthermore, working hours are defined as the time during which employees are under the employer's direction and supervision (Supreme Court judgment of 9 March 2000, *Employee v Mitsubishi Heavy Industries Nagasaki Shipyard*, Minshū, Vol 54, No 3, p 801), and employers are responsible for managing employees' working hours. If it is difficult to calculate working hours when employees work outside the workplace, the employer may deem that the employees work for the prescribed working hours (Article 38-2, paragraph 1 of the LSA). Recently, the Supreme Court issued a judgment relating to this provision.

In the above-mentioned case, the Tokyo High Court ruled that because the employee working outside the workplace created daily work reports, it was not difficult to calculate working hours (ie, working hours could potentially be calculated and were not “difficult to calculate”, so Article 38-2, paragraph 1 of the LSA shall not apply). However, the Supreme Court found that the nature, content and manner of the work, as well as the method and content of instructions and reports, made it difficult to determine the specific working conditions outside the workplace. Without thoroughly examining the accuracy of the daily reports, the High Court's judgment that it was not “difficult to calculate working hours” was deemed erroneous, and the case was remanded for further review (Supreme Court judgment of 16 April 2024, *Employee v CO-OP Globe*, Saibansho Jihō, No 1837, p 3).

The introduction of remote work has progressed during and after the COVID-19 pandemic. As work styles diversify, including remote work and telecommuting, discussions have arisen on how to calculate working hours. Therefore, this Supreme Court judgment and subsequent lower court judgments will likely serve as future references.

Equal Pay for Equal Work

Article 9 of the Act on Improvement of Personnel Management and Conversion of Employment Status for Part-Time Workers and Fixed-Term Workers (Act No 76 of 1993) (the “Part-Time and Fixed-Term Employment Act”) prohibits discriminatory treatment

concerning basic wages, bonuses and other benefits for being a part-time or fixed-term worker. Essentially, this provision is considered to establish the Japanese equivalent of the principle of “equal pay for equal work”. Moreover, the amendment of the Part-Time and Fixed-Term Employment Act was implemented for all companies in April 2021. In addition, the MHLW has created Guidelines for Equal Pay for Equal Work as a document that outlines a general approach and specific examples. Please note that the guidelines are currently being reviewed by the MHLW five years after their implementation, and their content may be revised in the future.

However, it is important to note that the Part-Time and Fixed-Term Employment Act primarily governs the relationship between regular employees and part-time or fixed-term workers, and does not address wage disparities among regular employees. Therefore, it seems that the Part-Time and Fixed-Term Employment Act's regulation mainly governs the gap between employment conditions in different groups, and the Japanese version of the “equal pay for equal work” is not synonymous with the equal pay for equal work regulation in other countries.

Furthermore, Article 9 establishes that discrimination is prohibited for cases where, “considering the practices and other circumstances in the relevant workplace, it is foreseeable that the content and arrangement of duties will be changed within the same scope as the changes made to regular employees' duties until termination of the employment relationship”. This means that justified differences in compensation may still exist based on the nature of duties, their complexity, or the possibility of job rotation.

Moreover, the regulation of age-based employment discrimination (which is often debated abroad) is not as stringent in Japan. However, the Act on Stabilisation of Employment of Elderly Persons (Act No 68 of 1971) obliges companies to provide continued employment until the age of 65 to those who desire it. As a result, most Japanese companies typically set the retirement age at either 60 or 65 in employment contracts; moreover, if the companies set the retirement age at 60, many opt to offer part-time or fixed-term contracts to employees aged 60 to 65 for a few

years before their official retirement. In this case, it is common for compensation to be significantly reduced around the time of retirement and transition to a part-time or fixed-time arrangement. It is notable that employees who continue to work under part-time or fixed-term contracts after retirement are still protected by the Part-Time and Fixed-Term Employment Act.

Recently, disputes have arisen over claims of unlawful salary reductions around retirement or discrimination based on a part-time or fixed-term arrangement, based on the fact that there is no significant difference in job description before and after retirement. For instance, in the Nagoya High Court judgment of 25 March 2022, Roudou Hanrei, No 1233, p 5, *Employee v Nagoya Automobile School*, the High Court indicated that salary reductions below 60% of pre-retirement earnings would be considered an infringement of the Act, given the absence of differences in job description before and after retirement. However, in the recent Supreme Court judgment of 20 July 2023, *Employee v Nagoya Automobile School*, the Court remanded the case to the lower court. In so doing, it stated that the lower court had neither sufficiently considered the nature and purpose of the pre-retirement and post-retirement basic pay and bonuses, nor had it adequately considered the circumstances of labour-management negotiations and the process. Consequently, a definitive conclusion is pending as the case will be retried in the lower court.

On the other hand, when there is a difference in job description before and after retirement, there is a tendency to justify salary reductions around retirement. For instance, in the Tokyo High Court judgment of 28 August 2024, Roudou Hanrei, No 1329, p 52, *Employee v Japan Surfactant Industry Co, Ltd*, the High Court indicated that the decision to reduce the salary of an employee who was demoted from a managerial position upon reaching retirement age to approximately 40% of pre-retirement earnings did not constitute an abuse of reasonable discretion.

Transfer Orders

In Japan, Work Rules often include provisions that allow employers to order employees to transfer for business reasons, which become part of the employment conditions and terms of contract. Given that

dismissal is not so easy under Japanese law, it has been established that employers may order employees to transfer workplaces at their discretion as long as it does not constitute an abuse of rights (Article 3, paragraph 5 of the Labour Contracts Act (Act No 128 of 2007); Supreme Court judgment of 14 July 1986, *Employee v Toa Paint*, Roudou Hanrei, Vol 477, p 6).

However, if there is an agreement between the employer and employee that limits the employee's duties, extent of the employment transfer, or job role to a specific type, such agreements tend to be respected. Recently, the Supreme Court made it clear that if there is an agreement on job limitations, transfer orders exceeding such limitations cannot be issued without the employee's consent (Supreme Court judgment of 26 April 2024, *Employee v Shiga Prefecture Social Welfare Council*, Saibansho Jihō, No 1838, p 3), implying that there is no room to discuss the abuse of rights. Please note that this case was related to tortious claims for damages and was not about a claim to invalidate the transfer order.

Worker Classification and the New Freelance Act

The applicability of employment law protection shall be determined by the eligibility of the "employee", and this is recognised as a worker classification matter. In general, regarding the definition of "employee" under the LSA, the following factors are considered:

- freedom to accept or decline work;
- presence or absence of specific instructions and supervision on how to carry out work;
- degree of time and location restrictions;
- substitutability of labour;
- remuneration in relation to the work performed;
- existence of the nature of business ownership;
- exclusivity; and
- treatment under tax and social insurance laws.

These factors are considered for determining employee status (Ministry of Labour, LSA Study Report, *The Criteria for Determining "Employee" under the LSA*, dated 19 December 1985).

In any case, if employee status is denied, the employee may not receive protection under labour laws. At the same time, regarding freelancers who are denied

employee status under the LSA, issues have been pointed out in terms of disparities in negotiation and information-gathering capabilities in transactions and working conditions. In this regard, it should also be noted that recent legislation has been enacted to protect independent contractors, ensuring fair transactions and improving working conditions, through the Act on the Improvement of Transactions with Specified Contractors (Act No 25 of 2023, the “New Freelance Act”), and the Act came into effect on 1 November 2024.

The New Freelance Act imposes obligations to:

- clearly state transaction conditions (Article 3);
- pay compensation by the due date (Article 4);
- accurately display recruitment information (Article 12); and
- establish harassment prevention measures (Article 14).

Given that long-term contractual relationships will generate economic dependence between the entrustor and freelancer, provisions similar to those of the Act against Delay in Payment of Subcontract Proceeds, etc to Subcontractors (Act No 120 of 1956) are established, prohibiting:

- refusal of acceptance (Article 5, paragraph 1, item 1);
- reduction of compensation (same paragraph, item 2);
- return of goods (item 3);
- unfairly low prices (item 4);
- coercion to purchase or use services (item 5);
- unjust requests for economic benefits (paragraph 2, item 1); and
- unjust changes or redelivery of delivered content (paragraph 2, item 2).

Additionally, there are obligations to consider child-care and nursing care (Article 13) and to provide notice and reasons for termination (Article 16) for entrustors.

In the case of violations of some provisions, freelancers can report to the relevant government authorities (Fair Trade Commission, Small and Medium Enterprise Agency or the MHLW). Also, entrustors must not treat

freelancers unfavourably for making such reports (Article 6, paragraph 3; Article 17, paragraph 3).

Regarding violations of the New Freelance Act, the Fair Trade Commission has established a contact point for reporting suspected violations of the New Freelance Act, and is accepting consultations and reports of violations. Additionally, on 17 June 2025, the Fair Trade Commission issued its first recommendation against two major publishing companies for failing to disclose transaction conditions such as compensation amounts and to pay compensation by the due date to freelancers (freelance writers) contracted as business partners, and made this recommendation public.

Additionally, on 25 October 2024, the MHLW announced the establishment of a consultation desk at the Labour Standards Inspection Office for individuals with concerns regarding their employee status under the LSA, etc, and it is accepting consultations on whether the freelancer qualifies as an “employee”.

Furthermore, on 2 May 2025, the MHLW established a new study group on the definition of “employee” under the LSA. It is expected that the above-mentioned factors and criteria for “employee” under the LSA (Ministry of Labour, LSA Study Report, *The Criteria for Determining “Employee” under the LSA*, dated 19 December 1985) will be revised for the first time in approximately 40 years.

Harassment Regulations

In Japan, in the context of workplace harassment, sexual harassment and then maternity harassment were regulated. After that, a type of harassment called power harassment (which is not commonly categorised as a type of workplace harassment in overseas jurisdictions) has also been regulated.

Employers must take necessary measures for employment management, so that the workers they employ neither suffer any disadvantageous working conditions on the grounds of those workers’ response to sexual harassment in the workplace, nor suffer any damage to their work environment due to sexual harassment (Article 11, paragraph 1 of the Act on Equal Opportunity and Treatment between Men and Wom-

en in Employment (Act No 113 of 1972) (the “Equal Opportunity Act”).

Maternity harassment is divided into two categories: (i) harassment carried out as an exercise of personnel authority by employers or others; and (ii) harassment by superiors or colleagues unrelated to personnel matters. Employers are directly prohibited from engaging in the former (Article 11-3, paragraph 2 of the Equal Opportunity Act; Article 25, paragraph 2 of the Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members (Act No 76 of 1991) (the “Childcare and Family Care Act”)), while the latter is further divided into (i) harassment related to the state of pregnancy, childbirth, or other matters related to pregnancy or childbirth that harm the working environment (harassment related to the state of pregnancy or childbirth, under the Equal Opportunity Act), and (ii) harassment related to the use of systems such as pre- and post-maternity leave or childcare leave that harm the working environment (harassment related to the use of systems, under the Equal Opportunity Act and the Childcare and Family Care Act). Accordingly, preventative measures are mandated, in accordance with Article 11-3, paragraph 1 of the Equal Opportunity Act; and Article 25, paragraph 1 of the Childcare and Family Care Act.

Power harassment is defined as “behaviour in the workplace that is based on a superior–subordinate relationship and exceeds the necessary and reasonable scope of work, resulting in harm to the employee’s working environment”. Employers are obligated to take preventative measures (Article 30-2, paragraph 1 of the Act on Comprehensively Advancing Labour Measures, and Stabilising the Employment of Workers, and Enriching Workers’ Vocational Lives (Act No 132 of 1966)). Accordingly, the issued MHLW Guidelines exist to address these types of harassment, indicating the direction of preventative measures.

While there is no exact match between the criteria for a tort claim and those for sexual harassment, maternity harassment and power harassment, many forms of workplace harassment constitute tortious acts; moreover, claims for damages for the consequent mental distress suffered are often filed.

The harassment of LGBTQ employees is prohibited under the regulations on sexual harassment and power harassment. Recently, the Supreme Court ruled that, in the specific circumstances, disadvantageous treatment towards a transgender employee in the government lacked reasonable justification and was illegal (Supreme Court judgment of 11 July 2023, *Employee v Government (Ministry of Economy, Trade and Industry)*, Minshū, Vol 77, No 5, p 1171).

Doctrine of Free Will

Although the principle of freedom of contract (based on the principle of private autonomy) is recognised as a fundamental concept under Japanese law, there are cases where agreements relating to employment, including their terms and existence, are negated by courts due to the lack of the employee’s free will.

In the leading case involving a reduction in retirement benefits through a change in employment rules, where the employee had signed and sealed a document indicating their agreement, the Supreme Court held that determination of the existence of consent should be based not only on the employee’s act of accepting the change but also on whether sufficient rationale objectively exists based on the employee’s free will, considering the nature and extent of the disadvantages imposed on the employee by the change, the circumstances and manner in which the employee came to perform the act, and the content of information or explanations provided to the employee before the act (Supreme Court judgment of 19 February 2016, Minshū, Vol 70, No 2, p 123, *Employee v Yamanashi Prefectural Credit Union*).

Subsequently, the concept of the doctrine of free will has been invoked in litigation cases; however, the scope of applicability of the doctrine of free will is not necessarily clear at present. Currently, there are existing analyses and discussions in scholarly articles that have elaborately examined past precedents and cases (see Hisashi Ikeda, “The Coerciveness of Labour and Employment Law and Employee Expression of Intention”, *Hōritsu Jihō*, No 1186, p 29), implying that the application will not be expanded without limitations.

Digital Money Payment of Wages

As a general rule, employers must pay the full amount of wages in currency (Japanese yen) directly to the worker (Article 24, paragraph 1 of the LSA); however, if the worker agrees, employers may pay a worker's wage by transfer to the worker's account at a bank or other financial institution designated by the worker (Article 7-2 of the Ordinance for Enforcement of the LSA).

In addition, with the increase in cashless payments and diversification of remittance services, there has been a certain demand to receive wages in digital money. Taking this into consideration, it has become possible to pay wages in digital money since April 2023.

However, in order to implement this system, it is necessary to select a fund transfer service provider from among those designated by the MHLW, conclude a labour-management agreement, and obtain the consent of each individual worker. Furthermore, this system is intended solely for payment and remittance purposes and is not a deposit system. As such, there is a maximum acceptance limit, and any transfers exceeding this limit will be automatically withdrawn to a deposit account. Additionally, payments in the form of non-cashable points or cryptocurrency are not permitted.

Although this system has been operational since April 2023, it became possible for companies to actually pay wages using digital money on 1 April 2025, when four companies were designated as fund transfer service providers by the MHLW.



Law and Practice

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data protection law, immigration, residence, work permits, income tax and social security. The firm draws on the human resources, specific expertise and experience of 30 lawyers and another 70 or so qualified personnel, through its associated corporate services company Fenlex, to service the legal and corporate requirements of clients. The firm's diverse team of lawyers ensures it can deliver comprehensive legal solutions regardless of the specific business or industry sector its clients operate within.

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1. Employment Terms

1.1 Employee Status

The Maltese workforce is commonly divided into two main categories: employed individuals and self-employed individuals.

Over the past years, the courts have also cited the term “workers”, which broadly incorporates employees, agency workers, contract staff and self-employed persons who are contingent on a single employer.

Employees

The Employment and Industrial Relations Act (EIRA), Chapter 452 of the Laws of Malta, defines an employee as “any person who has entered into or works under a contract of service, or any person who has undertaken personally to execute any work or service for, and under the immediate direction and control of another person, including an outworker but excluding work or service performed in a professional capacity or as a contractor for another person when such work or service is not regulated by a specific contract of service”. Any person, therefore, who is party to an employment contract is deemed to be an employee. The definition in the EIRA also comprises outworkers and other personnel who work under the direction and control of another person, but it excludes professionals and contractors who have no employment contract with the employer.

In turn, employees may be classified into three categories: full-time workers, full-time workers on reduced hours and part-time workers (including casual workers). Under Maltese law, an employee is considered

to be a full-timer if such person works an average of 40 hours a week.

The EIRA contains rights and obligations that apply across the board, irrespective of the industry or sector of employment, such as on the protection of wages, rules on termination, rules on discrimination and equal pay.

Wage Regulation Orders (WROs)

Maltese law also establishes various rights and limitations that apply to specific sectors/industries. These sector-specific rules are regulated by means of several sector-specific Wage Regulation Orders (WROs). Typically, these WROs would regulate minimum wages, overtime rates, special allowances and leave entitlements.

One such industry is the wholesale and retail industry, regulated by the Wholesale and Retail Trades Wages Council Wage Regulation Order, SL 452.63. This applies to wholesale merchants, distributors, importers, exporters, commission agents, wholesale and marketing co-operatives, retailers, lending libraries, auctioneers, hairdressers, consumers’ co-operatives and photographic studios, but excludes shops run under the management of a hotel or club (in respect of which a separate WRO applies).

Sector-specific WROs exist for:

- public transport;
- cinemas and theatres;
- printing and publishing;
- construction;
- allied industry;

- private schools;
- woodworks;
- hotels and clubs;
- the beverage industry;
- food manufacturing;
- hire of cars;
- laundry;
- tobacco industry;
- seafaring;
- agriculture;
- jewellery;
- clay and glass;
- travel insurance;
- plastic;
- paper and electronics;
- domestic services;
- the canning industry;
- digital platform delivery; and
- hospitals and clinics.

Each WRO will define the sector to which it applies in more detail.

A Professional Offices Wages Wage Regulation Order applies to offices and establishments of architects, engineers, legal advisers, notaries, accountants, auditors, bookkeepers, trade unions, consultants in branches of engineering, architecture, law and accounting, and research and scientific establishments (except labs in private hospitals and market research units and advertising agencies).

Where no WRO applies to an industry (such as the i-gaming industry), other general conditions will apply – and these are primarily regulated by the Minimum Special Leave Entitlement Regulations.

Part-timers are employees who work less than full-timers and who are entitled to pro rata benefits, calculations and payments. Under Maltese law, part-time workers are regulated by means of the Part Time Employees Regulations, SL 452.79. Maltese law also underlines that part-timers are not to be treated less favourably than full-time workers.

Self-Employed Individuals

In Malta, self-employment is not regulated, as such, in that a self-employed person is regulated by the gen-

eral laws on trade and commerce without the protection of employment laws.

The Employment Status National Standard Order, SL 452.108, serves to protect against the abuse of purported self-employment. This National Standard Order delineates that when an individual is engaged to provide services and satisfies five out of the eight broadly defined conditions, then that relationship between the client and the individual shall automatically (by operation of the law) be deemed to be an employment relationship, notwithstanding any declaration to the contrary.

Consequently, such individual shall be afforded the relative protections under the EIRA, and the law makes certain assumptions towards protecting that person (eg, that, unless otherwise stated, the assumed employment is of an indefinite duration).

The National Standard Order lays down the following conditions.

- The individual depends on one party for which work is performed for at least 75% of their income over a one-year period.
- The individual depends on such party to determine what work is to be done and how it should be carried out.
- The individual performs the work using equipment, tools and machinery provided by such party.
- The individual is subject to a work time schedule or minimum work periods established by such party.
- The individual cannot sub-contract their work to other individuals or substitute themselves when carrying out the work.
- The individual is integrated into the structure of the production process, the work organisation or the company's or other organisation's hierarchy.
- The individual's activity is a core element in the organisation and pursuit of the objectives of such party.
- The individual carries out similar tasks to existing employees or to those formerly undertaken by employees.

Exemptions from such rules may be sought by way of exception. However, the general rule is that an

employment relationship cannot be converted into a self-employment relationship except with the authorisation of the relevant authority.

1.2 Employment Contracts

Employment Relationship

The employment relationship in Malta assumes the existence of an agreement, whether such agreement is written or verbal.

Although Maltese legislation does not mandate that a written contract must necessarily be entered into upon engagement, the standard practice is that written agreements are entered into between the employer and the employee. In any event, in terms of the Transparent and Predictable Working Conditions Regulations, SL 452.126, employers have an obligation to provide employees with various criteria relating to their employment, including a basic description of the work to be undertaken. This may be satisfied by a basic letter of engagement, a contract of employment, as well as a collective agreement.

If an employment contract is signed, then Maltese civil law generally applies the norm that the parties to a contract are free to regulate the conditions between them, in so far as the agreement satisfies certain basic rules (such as the capacity of the parties) and regulates a subject which is lawful. Therefore, the terms of a contract are generally deemed to be the law between the parties (*lex contractu*). However, a fundamental rule enshrined in Maltese employment law is that a contract of employment cannot provide certain conditions which are less favourable to the employee than those specified in employment law. Thus, by way of exception to the norm, the more beneficial minimum conditions provided by the law must always prevail.

Contracts of Employment

The terms of a contract of employment will vary depending on the type of employment relationship which exists, whether for an indefinite period, a fixed period or the completion of a project.

Each type of contract must necessarily satisfy certain conditions and is subject to diverse rules, primarily in relation to termination of such employment and the consequences of same. Details contained in contracts

will also typically differ depending on the grade, nature of employment and on the nature of the employer's industry.

Specific legislation also exists to regulate the conditions and limitations of the use of definite (fixed-term) contracts (and their possible automatic conversion into indefinite-term contracts), and the use of part-time employment.

Further rules also apply if the employee is employed to work overseas or is an outworker.

1.3 Working Hours

Working Hours and Overtime

Working hours tend to vary according to the industry in question and may be regulated by sector-specific WROs.

The average normal working week (excluding overtime) is a 40-hour week. In certain cases, normal working hours can exceed 40 hours a week.

As a general standard, working time should not exceed a maximum of 48 hours a week, although an employee may expressly consent to work in excess of 48 hours per week. Such consent may also be revoked, subject to the provision of prior notice.

It is understood that an employer has a right to instruct an employee to work eight hours of overtime per week. This is subject to certain exceptions provided by the law, such as in the case of a pregnant employee, as well as for a period after an employee has given birth or adopted a child.

Workers are generally entitled to a minimum daily rest period of 11 consecutive hours. In certain circumstances, however, the full rest period may not be availed of, provided that equivalent compensatory rest periods are provided to the employee immediately following the corresponding periods worked.

With respect to overtime, employees who are not regulated by sector-specific WROs are covered by the Overtime Regulations, SL 452.110, which lay down a rate of 1.5 times the normal rate for work carried out in excess of 40 hours a week averaged over a four-

week period, or over the shift cycle at the employer's discretion. Sector-specific WROs may mandate different overtime rates. The rules on overtime for public service and public sector employees differ.

In Malta, it is also common for the employer and employee to agree to a consolidated wage which covers payment for all working hours, including overtime hours. Whether such practice is in line with the Overtime Regulations is contentious and would have to be assessed on a case-by-case basis. This practice remains common, particularly in relation to senior grade employees and C-level executives, whose wages surpass double the national minimum wage.

Flexible Working Time

Through the transposition of the Work-Life Balance Directive, workers with children up to the age of eight years, and carers, have the right to request flexible working arrangements. Under Maltese law, a carer is defined as “any worker providing personal care or support to a relative, or to a person who lives in the same household as the worker, and who is in need of care or support for a serious medical reason”.

Flexible working arrangements may include, but are not limited to, remote working, working on reduced hours and flexitime.

Employers must consider and respond to requests for flexible working arrangements within two weeks, providing reasons for any refusal of such requests or for any postponement of such arrangements. Flexible working arrangements may be limited in duration and in such cases the worker shall have the right to request to return to the original working pattern before the end of the agreed period where this is justified on the basis of a change in circumstances. The employer shall consider and respond to a request for an early return to the original working pattern, taking into account the needs of both the employer and the worker.

Part-Time Contracts

Part-time contracts are regulated by the standard rules applicable to full-time employment, provided that all minimum entitlements are calculated pro rata depending on the hours worked. Part-time employ-

ees are protected from being treated less favourably because they work on a part-time basis.

1.4 Compensation

Minimum Wage

For the year 2025, the national minimum wage for full-time employees per week is:

- age 18 years and over – EUR221.78;
- age 17 years – EUR215.00; and
- under 17 years – EUR212.16.

Other sector-specific minimum wages regulated by the relevant sector-specific WROs may apply.

The minimum wage is typically adjusted annually to reflect the increase in the cost of living. In 2025, the cost-of-living adjustment for a full-time employee amounted to EUR5.24 per week.

Various WROs impose special overtime rates for work exceeding the normal working hours, or for work carried out on weekends or public holidays. Some WROs also provide special allowances, such as for night work or shift work.

Bonuses and Allowances

All employees are entitled to a statutory bonus and a weekly allowance, twice yearly. A full statutory bonus of EUR135.10 must be paid at the end of June and another in December, while a full weekly allowance of EUR121.16 is payable at the end of March and the end of September.

Employees may also receive a bonus from their employer as part of their remuneration. Bonuses may be guaranteed, discretionary or a combination of both. Guaranteed bonuses are bonuses that have been agreed upon contractually and which must necessarily be paid by the employer. Discretionary bonuses, on the other hand, leave employers with some flexibility in deciding what payments, if any, are to be made to the employee (generally these are calculated on the basis of performance). It is also possible to have a combination of both guaranteed and discretionary bonuses, allowing for a discretionary element within a contractual framework.

The rules on remuneration for public service and public sector employees vary.

1.5 Other Employment Terms

Under Maltese law, employees may avail of a variety of leave entitlements, ranging from annual leave to leave on the occasion of marriage and leave for medically assisted procreation.

Annual Leave Entitlement and Pay

The Organisation of Working Time Regulations, SL 452.87, sets out the minimum leave entitlement and the rules related to carrying forward leave and payments in lieu.

Employees working a 40-hour week and an eight-hour working day are entitled to a minimum statutory leave entitlement of 24 days per annum, as well as an extra day of leave for each public or national holiday falling on a Saturday or Sunday. Therefore, this means that the yearly leave entitlements will fluctuate depending on the number of public or national holidays falling on a Saturday or Sunday of each calendar year paid at the normal rate of remuneration of such employee. Should an employee's average hours (excluding overtime) calculated over a period of 17 weeks be below or exceed 40 hours per week, the entitlement in hours is to be adjusted accordingly.

Part-time employees and employees who have not completed a full year of service are entitled to paid leave calculated on a pro rata basis.

The Annual Leave National Standard Order, SL 452.115, regulates the procedures.

Other Leave Entitlements

Maltese Law provides for and regulates various other leave entitlements, including sick leave, maternity leave, adoption leave, paternity leave, parental leave, bereavement leave, jury leave and quarantine leave.

Sick leave

The sick leave entitlement granted to employees varies significantly according to the applicable sector-specific WRO. Where an employee is not covered by a specific WRO, such employee is entitled to two working weeks per year (calculated in hours) of sick leave.

This sick leave entitlement is to be calculated on the basis of a 40-hour working week and an eight-hour working day.

Payment for sick leave is to be borne by the employer. However, should an employee remain unable to work after having exhausted the full entitlement, such employee shall continue to receive the sickness benefit from the Social Security Department.

Part-time employees are entitled to paid sick leave calculated on a pro rata basis. The entitlement is also calculated proportionally for employees who have not completed a full year of service.

Family leave

Under Maltese law, a pregnant employee may take maternity leave for an uninterrupted period of 18 weeks. The first 14 weeks are to be paid by the employer. Payment for maternity leave beyond the first 14 weeks is not paid by the employer but by the Social Security Department.

Employees may also be entitled to special maternity leave should the conditions required be satisfied.

Similarly, an employee who is the parent of an adopted child is also entitled to an uninterrupted period of 18 weeks of adoption leave. The leave shall commence on the date on which the child passes into the care and custody of the adoptive parent. An employer shall be bound to pay for the first 14 weeks of adoption leave with full wages. However, should the employee choose to take any additional adoption leave beyond the 14 weeks, payment for such additional leave will be obtained from the Social Security Department.

Fathers or equivalent second parents are also entitled to ten working days of paternity leave on full pay on the birth or the adoption of a child.

Furthermore, each parent has the right to be granted paid parental leave on the grounds of birth, adoption, child fostering in the case of foster parents, or legal custody of a child, to enable them to take care of that child for a period of four months until the child has attained the age of eight years. Two months cannot be transferred between the parents and are to be paid.

In this case, an employee wishing to take such leave must have at least 12 months of continuous service with the employer unless a shorter period is agreed to.

Confidentiality Clauses, Non-Disparagement Clauses and Employee Liability

Confidentiality and non-disparagement clauses in employment contracts are not expressly regulated in Malta. However, they are common clauses introduced within contracts of employment together with other clauses such as those on intellectual property, non-competition, compliance with policies and processing of personal data.

Although not specifically regulated, it is understood that during employment, employees have an implied duty of confidentiality as well as an implied duty to act in the best interest of the employer. These implied obligations have often been upheld by the Industrial Tribunal and the courts. They also apply following the termination of employment but in a more limited manner.

With certain employees one may also invoke duties of a fiduciary nature regulated by the Civil Code.

With regard to employee liability, Maltese law does not explicitly regulate the liability of an employee during the course of their engagement with the employer. However, general civil law principles of contract and tort are applicable in such circumstances.

The law does impose an obligation on an employee to pay a sum to the employer if the employee abandons fixed-term employment without good and sufficient cause, or if the employee fails to give prior notice of termination from an indefinite-term contract without good and sufficient cause.

2. Restrictive Covenants

2.1 Non-Competes

Non-competition clauses effectively seek to prevent an employee from joining a competitor employer or facilitating a competing business during employment or for a defined period after the termination of employment.

Restrictive covenants of this nature do not arise by law, except indirectly in so far as trade secrets are protected, offering limited protection. Therefore, in order to be enforceable, restrictive covenants must necessarily be included in a contract of employment, or in a side letter signed by the employee.

Non-competition clauses applicable during the employment period are standard and there is a general understanding that they should be enforceable. This does not mean that employees can be prevented from undertaking activities for another (non-competing) employer.

Post-Termination Restriction Clauses

Conversely, post-termination restriction clauses, including non-competition, are not easily enforceable. Over the past decades, local courts have adopted different interpretations, in some cases dismissing the clauses altogether for being restraints of trade that were deemed to be in breach of public policy, but in other more recent cases enforcing the restraints in so far as they were warranted, narrowly defined and limited in scope and duration, and also, in some cases, compensated for. On some occasions, the courts have also enforced a contractual obligation on the former employee to pay a sum by way of pre-liquidated damages, with the courts maintaining that this was not an illegal fine imposed on the employee.

The courts have generally interpreted such clauses restrictively and have emphasised that the limitation of time and industry area imposed have to be reasonable, taking into consideration the small size of Malta and the relatively small market, in that a former employee cannot be forced to leave the country to be able to pursue their vocation/profession. There is no law regulating these types of covenants and therefore there is no maximum period imposed by law. Unlimited periods are not permissible and, typically, restrictions would be for periods of six to 12 months from termination.

There is no mandatory obligation to compensate employees for post-termination restrictions. However, compensation is likely to increase the chances of enforceability, as has also been indicated by Maltese courts in recent months.

Therefore, such clauses must be specific in that they must refer to an objective, a time and a place. Should a clause be too vast or too vague, then one might argue that this would be going over and above its original scope, that being the protection of the employer and the business.

The courts have also often highlighted that the employer would need to prove that a loss was or would have been incurred due to the ex-employee moving to a competitor.

2.2 Non-Solicits

Non-solicitation clauses effectively seek to prohibit an ex-employee from soliciting clients of the employer and/or from soliciting other employees/workers of the employer to terminate their employment with the employer. In a similar manner to non-competition clauses, in order to be enforceable, non-solicitation clauses must form part of a contract of employment or be included in a side letter signed by the employee.

Non-solicitation clauses are relatively common in contracts of employment governed by Maltese law and may be enforced through judicial proceedings in so far as they are deemed to be reasonable. The courts have generally interpreted such clauses restrictively and have emphasised that the limitation of time and market imposed have to be reasonable, taking into account Malta's small size and its relatively limited market. The non-solicitation of clients is more likely to be enforced than the non-solicitation of employees (as, on occasion, the courts have suggested that employees cannot be treated as assets of a company).

The Maltese courts have enforced clauses that prohibited a former employee from working with a client of the employer.

3. Data Privacy

3.1 Data Privacy Law and Employment

Protection of privacy rights is enshrined in the Constitution of Malta as well as the European Convention Act (Chapter 319, Laws of Malta), which transposes the European Convention for the Protection of Human Rights and Fundamental Freedoms into Maltese law.

Data protection is primarily regulated by the EU General Data Protection Regulation (GDPR), together with the Data Protection Act, Chapter 586 of the Laws of Malta and subsidiary legislation enacted thereunder.

Except for some basic rules on the processing of personal data in the context of teleworking, which were enacted prior to the GDPR, the Maltese legislature has so far not enacted any data protection law specific to the employment sphere, in that no laws expressly regulating the processing of personal data in the employment context and/or which affect the privacy rights of employees, have been enacted. Therefore, the standard data protection principles and rules apply to the employment context.

Generally, as data controllers, employers are likely to rely on the legal grounds of performance of a contract, a legal requirement or legitimate interest (provided that such interest is not overridden by the rights of others) in order to process employee data.

Employers must essentially ensure that they are processing data in accordance with the principles outlined in the GDPR, namely:

- lawfulness, fairness and transparency;
- purpose limitation;
- data minimisation;
- accuracy;
- storage limitation;
- integrity and confidentiality; and
- accountability.

As data subjects, employees enjoy a degree of privacy and may take advantage of the various rights granted to data subjects under the GDPR. Such rights are not absolute in nature and are subject to certain limitations.

4. Foreign Workers

4.1 Limitations on Foreign Workers

EU/EEA/Swiss Nationals

EU/EEA/Swiss nationals and their family members, as defined, may take up employment and/or self-employment in Malta in the exercise of their EU Treaty

rights; there are currently no restrictions on EU/EEA/Swiss nationals' access to the labour market.

Third-Country Nationals

Non-EU/EEA/Swiss nationals (ie, third-country nationals) typically require an employment licence to work in Malta and cannot legally take up employment or self-employment without this licence. An application for an employment licence is generally submitted by the employer to the Expatriates Unit, Identità, through a Single Permit Application (SPA). All applications must be submitted online. On completion of a successful SPA, the third-country national would be issued with a Maltese residence permit, which would allow the person to legally work and reside in Malta, subject to certain conditions. For standard SPAs, the processing time of an application takes roughly 12 weeks from the submission of the application and a successful applicant will be issued with a residence permit for a minimum one-year period.

Labour Market Test

In terms of current policy, the employment of third-country nationals by Maltese employers is generally subject to the satisfaction of a Labour Market Test, whereby the employer must demonstrate that an effort was made to first recruit EU/EEA/Swiss nationals for the position, prior to offering the position to the third-country national – this is subject to any applicable exemptions.

In July 2025, the government announced a new Labour Migration Policy, a key focus of which centres around the applicability of the Labour Market Test. It is expected that more rigorous testing will be carried out by the authorities, whilst employers will now be required to adhere to more stringent rules relative to the advertising of job positions, amongst other matters.

Malta Vacancy Exemption List

Due to exigencies in the current market, certain occupations are exempt from the requirement to satisfy the Labour Market Test. The Malta Vacancy Exemption List is issued by Jobsplus and updated from time to time, depending on shortages in the local labour market. It is important to note that, unlike the Key Employee Initiative Scheme (see below), when an occupation

is on the Malta Vacancy Exemption List, the role is exempt from the Labour Market Test irrespective of the gross annual salary earned by the third-country national or the seniority of the position. The Malta Vacancy Exemption List currently includes the following occupations: accountants, auditors, personal carers, IT consultants and vets.

Key Employee Initiative Scheme and Specialist Employee Initiative

In addition to the Malta Vacancy Exemption List, a third-country national may also submit an SPA under the Key Employee Initiative Scheme (KEI) or the Specialist Employee Initiative (SEI).

Effective 1 August 2025, the KEI applies to third-country nationals who:

- earn a gross basic salary of at least EUR45,000 per annum; and
- hold a managerial or highly technical position which requires relevant qualifications or adequate experience.

The SEI applies to third-country nationals who:

- earn a gross basic salary of at least EUR30,000 per annum; and
- hold academic qualifications and/or work experience linked to the role being offered.

The KEI and SEI are beneficial as, in addition to being exempt from the Labour Market Test, they provide for a fast-tracked application process, whereby SPAs are processed in around ten to 15 working days from submission of the application. Furthermore, a successful applicant is issued with a one-year residence permit on first submission and on renewal, subject to the discretion of the Expatriates Unit, may be issued with a residence permit for a three-year period.

In terms of the Labour Migration Policy, amendments to the KEI and SEI are expected to be introduced later in 2025.

Residence permit

It is important to note that, once an SPA is successfully approved and the third-country national is issued

with a residence permit, that residence permit solely allows the third-country national to work in Malta:

- in the specific occupation applied for; and
- with that specific employer.

Should the third-country national change occupation with their current employer and/or change employer, then a new SPA must be submitted. Furthermore, should a third-country national remain in the same position, a renewal application would need to be submitted prior to the expiration of the residence permit.

Nomad Residence Permit

Residency Malta Agency has recently launched the Nomad Residence Permit, which allows third-country nationals to relocate to Malta and work remotely from here. The third-country national must be able to work remotely, independent of location, using telecommunication technologies, and may be either employed by a foreign employer or self-employed. In both cases, the Nomad Residence Permit holder cannot provide services to Maltese-based clients/businesses.

Successful applicants will be issued with a residence card that is valid for a period of one year and may be renewed. In terms of current policy, a Nomad Residence Permit may only be renewed three times, for a total stay by the holder of a maximum of four years.

The income generated in Malta by the Nomad Residence Permit holder may be subject to tax in Malta at a reduced flat rate of tax of 10%, subject to certain conditions.

4.2 Registration Requirements for Foreign Workers

EU/EEA/Swiss Nationals

EU/EEA/Swiss nationals who have been residing in Malta for a period of three months must submit a Residence Permit Application to the Expatriates Unit. An EU/EEA/Swiss national is issued with a residence permit for a five-year period. Unlike third-country nationals, EU/EEA/Swiss nationals are not subject to labour market considerations and are not required to change their residence card when changing employer and/or occupation.

In addition to the requirement to apply for a residence card, EU/EEA/Swiss nationals who are employed and working in Malta are generally also required to register for tax and social security purposes. The employer should register the employee with the revenue office for payroll purposes. Furthermore, the employer is required to register the employment with Jobsplus, through the submission of the requisite form.

Third-Country Nationals

As indicated in **4.1 Limitations on Foreign Workers**, third-country nationals are typically required to apply for an employment licence in order to legally work and reside in Malta, and the most common type of application is the SPA. The documentation required for an SPA depends on the occupation and whether or not the position is exempt from the Labour Market Test. An SPA may be submitted whilst the third-country national is still abroad or already in Malta (the latter is dependent on the type of visa the applicant holds). In fact, the forms and documentation required depend also on whether the SPA is new – ie, a first-time application – or whether the person is already in Malta and changing jobs, among other matters.

A typical SPA includes:

- the application form, which would need to be endorsed by the employer;
- a lease agreement, registered with the Housing Authority, or a final deed of purchase (should the third-country national own property in Malta);
- a copy of the third-country national's passport (including a copy of a valid visa when submitting a new application); and
- a position description, this being a standard form issued by Jobsplus which addresses a number of questions related to the position being offered to the third-country national.

On completion of a successful SPA, the employer should register the employee with the revenue office for payroll purposes. Furthermore, the employer is required to register the employment with Jobsplus, through the submission of the requisite form.

5. New Work

5.1 Mobile Work

Maltese law regulates the concept of telework by means of the Telework National Standard Order (SL 452.104). SL 452.104 defines telework as “a form of organising and/or performing work, using information technology, in the context of an employment contract or relationship, where work, which could also be performed at the employer’s premises, is carried out away from those premises on a regular basis”.

The National Standard Order delineates conditions that must be adhered to in the case of teleworking, including the need for a telework agreement to be in place containing certain requirements, as well as the need for the employer to take appropriate measures particularly with regard to software, to ensure the protection of data used and processed by the employee carrying out telework. The law obliges the employer to inform the employee carrying out telework of any restrictions on the use of IT equipment, internet or other IT tools and any sanction in case of non-compliance.

SL 452.104 also stipulates that where monitoring is to be carried out by the employer, both the employee and the employer must agree to such monitoring in the telework agreement, and any such monitoring system must be in proportion to the objective and introduced in accordance with Council Directive 90/270 on the minimum safety and health requirements for work with display screen equipment.

As regards health and safety obligations of the employer when employees are teleworking, telework does not absolve employers of their obligations in terms of law in that employers are still bound by their health and safety obligations towards employees and, therefore, the duty of care must always be exercised irrespective of whether the employee is working remotely or not.

As regards remote working from overseas, employers must also keep in mind tax and social security considerations that may arise and their obligations in this regard.

5.2 Sabbaticals

Maltese law does not provide for sabbatical leave as a statutory leave entitlement granted to employees. There is nothing that prohibits employers from granting sabbatical leave, whether paid or unpaid. Although not highly common in Malta within the private sector, employers would typically impose restrictions during sabbatical leave, such as a prohibition from undertaking paid work.

5.3 Other New Manifestations

Flexible working is one of the most popular new manifestations in the field of employment, whether in the form of variable working hours or remote working. Spurred on by the COVID-19 pandemic, employees have come to expect a level of flexibility from employers. Multi-functional workspaces are also on the rise, in that it is expected that within the next few years, companies will minimise office space and make the remaining places of work more flexible and multi-functional, such as by introducing hot-desking, where employees do not have an assigned seat but rather claim a different open workspace whenever at the office. Also accelerated by the consequences of the pandemic, employers are increasingly prioritising employee wellness, which in turn is expected to decrease high turnover of staff. Furthermore, in an effort to retain talent in a competitive job market, ongoing learning and development opportunities are anticipated to grow. Professionals need to stay up to date with the latest advancements in their fields to progress in their careers.

6. Collective Relations

6.1 Unions

The right of assembly and association is a fundamental human right enshrined in the Maltese Constitution.

The formation of trade unions and the process by which a union is recognised by an employer is regulated by law. However, it is generally only employers with a large number of employees and parastatal companies that are unionised or have employee representation.

The responsibilities, privileges and obligations of trade unions in Malta are regulated by means of the EIRA. Trade unions have the power to enter into contracts and, subject to certain restrictions, may sue and be sued. Trade unions also enjoy a certain degree of protection from liability in carrying out their legitimate activities, particularly when acting in contemplation or in furtherance of a trade dispute. However, the EIRA delineates exceptions to industrial disputes relating to essential-service industries.

The EIRA also extends protection to employees who follow directives issued by a union in contemplation or furtherance of a trade dispute.

6.2 Employee Representative Bodies

Where no trade union is recognised within a place of work, the law grants the right to employees to elect an employee representative. This applies to workplaces with more than 50 employees. Employee representatives are not granted any voting or decision-making rights but, in certain instances, are entitled to receive information and engage in consultations with the employer.

6.3 Collective Bargaining Agreements

Collective bargaining agreements are contracts negotiated between trade unions and employers to regulate minimum conditions within a workforce, or sections of the workforce. The EIRA recognises collective agreements in so far as they are duly registered. Clauses in collective agreements cannot provide for conditions that are less favourable than the minimum provided by the law.

Collective agreements generally regulate, among others, employees' terms and conditions of employment, such as employee wages and benefits, employee duties, and health and safety. Such agreements also delineate the duties and responsibilities of the employer and also often lay down the applicable rules for cases that require disciplinary proceedings.

7. Termination

7.1 Grounds for Termination

Termination During Probation

For both definite and indefinite contracts of employment, the law details a probationary period during which both the employer and the employee may terminate employment without providing a reason, although parties may decide to contract out of such a probationary period. One week's notice must be given should the employee have been in employment for more than one month. Special rules apply to employees who are pregnant or on maternity leave or who have suffered a work injury.

Termination of Definite Contracts of Employment

Fixed-term contracts cannot be terminated prior to the expiration of the stipulated term, except on the basis of "good and sufficient cause". Should either party terminate prior to the lapse of the specified term, the terminating party would be liable to pay the other party half of the wages that would have accrued to the employee in respect of the remainder of the time specifically agreed upon.

Termination of Indefinite Contracts of Employment

With regards to termination of employment following the expiration of a probationary period, if any, an indefinite contract of employment may be terminated by the employer on the grounds of:

- good and sufficient cause;
- redundancy; or
- reaching retirement age.

With regards to the latter, an employer may terminate an employee's employment when the employee reaches pensionable age without giving prior notice or having any other valid reason by law. Pension age in Malta is 62; however, the pensionable age may also vary depending on the employee's birth year.

The term "good and sufficient cause" is not defined by law. However, the law delineates what does not constitute "good and sufficient cause" – eg, termination on the occasion of an employee's marriage.

There is no specific procedure that an employer must follow when terminating for “good and sufficient cause”; however, the Industrial Tribunal generally emphasises that warnings ought to be given to an employee prior to dismissal, particularly if termination is based on issues of performance or conduct, and the employer must demonstrate that they engaged in a due process prior to dismissal.

In such cases, the employer is not required to give the employee advance notice of termination and is also not required to pay the employee any wages relating to such notice period.

With regards to termination of employment by way of redundancy, Maltese law requires employers to follow the last-in-first-out rule, in that the employer must terminate the employment of that person who was last engaged in the class of employment affected by such redundancy. In such cases, the employer must give prior notice of such termination, depending on the employee’s length of employment. Should the employee not wish to work the full notice period, the employee may require the employer to pay them a sum equal to one half of the wages due for the unexpired period of notice. If the employer fails to give notice, the employee will be entitled to a payment in lieu thereof.

Furthermore, should the post formerly occupied by the employee who was rendered redundant be made available within a year, that person shall be entitled to be reinstated in that post.

Collective Redundancies

Collective redundancies are regulated by means of SL 452.80. A collective redundancy can arise depending on the size of the workforce and the number of employees to be declared redundant within a period of 30 days.

Consultation with the appropriate representatives must take place at the earliest possible opportunity and is to cover ways and means of avoiding the collective redundancies or reducing the number of employees affected by such redundancies and for mitigating the consequences thereof. Employers must provide the employee representative with a written statement

detailing all pertinent information, including the selection of the employees who are to be made redundant, as well as the period over which such redundancies are to be carried out. A copy of the written notification and a copy of the written statement must also be provided to the Director of Employment and Industrial Relations.

Unless otherwise authorised, the employer cannot terminate the employment of employees affected by any projected collective redundancy before the lapse of 30 days from notification.

Termination by an Employee of an Indefinite-Term Contract

Employees are entitled to terminate their indefinite contract employment at any time, without assigning any reason, provided that the employee provides the employer with the required notice period.

In such cases, the employer may either allow the employee to work their full notice period or, alternatively, terminate the employment and pay the employee a sum equal to the full wages due for the unexpired period of notice.

7.2 Notice Periods

In cases where the employer terminates an indefinite-term contract on the basis of redundancy, as well as in cases where the employee resigns from their post, the terminating party is obliged to provide the other party with notice of such termination.

Minimum statutory notice periods are based on the length of continuous employment with the employer in that, for example, employees who have been employed for between six months and two years have a notice period of two weeks. The maximum notice period contemplated by law is 12 weeks.

Notwithstanding the minimum notice period by law, in the case of employees with a technical, administrative, executive or managerial post, the parties may agree to longer notice periods.

Should an employee fail to give the required notice, the employee will be liable to pay the employer a sum equal to half the wages that would have been payable

in respect of the notice period. Should the employer fail to give the required notice to an employee being made redundant, the employer shall be liable to pay the employee a sum equal to the full wages that would have been payable in respect of the notice period.

Maltese law does not require employers to pay any severance pay over and above the wages covering the relevant notice period. Generally, severance pay is only rewarded if the employer gives enhanced payments or wishes to have a settlement agreement signed.

7.3 Dismissal for (Serious) Cause

Summary dismissal is a form of dismissal whereby the employee is dismissed due to grave misconduct. Although summary dismissals do occur in practice, the courts have held that such dismissals are the exception, not the norm, and that the employer must have good and sufficient cause, which is gross and thus warrants a dismissal rather than a mere warning.

The law does not establish any specific procedure that must necessarily be followed; however, the tribunal generally wants to see that an employee was given the opportunity to defend themselves and have a fair hearing. In recent years, the Court of Appeal has directed the tribunal not to award compensation to employees if such a procedure was not applied, in so far as there was genuinely good and sufficient cause warranting a dismissal.

In such cases where the employer dismisses the employee summarily, the employer is not required to give the employee advance notice of termination or payment for such notice.

An employee who feels aggrieved by the dismissal has four months within which to file a claim before the Industrial Tribunal. Both parties would then have the right to be represented before the Tribunal and to present their evidence and bring any relevant witnesses forward to testify.

Should the employer fail to prove that the dismissal was based on good and sufficient cause, the Industrial Tribunal may either order reinstatement and/or award monetary compensation. Employees holding

a managerial or executive post are not typically reinstated, but are provided with monetary compensation should the dismissal be deemed unfair by the Industrial Tribunal.

7.4 Termination Agreements

Termination agreements are not regulated under Maltese law, although parties may agree to terminate the employment relationship by mutual agreement and/or to settle disputes. In this case, general principles of contract law would apply, as well as the rules on compromise agreements.

7.5 Protected Categories of Employee

Maltese law seeks to protect specific groups of employees from dismissal. This protection applies to terminations connected with individuals who are pregnant or on maternity leave, individuals availing themselves of parental leave, and individuals who are dismissed due to the fact that they are members of a trade union or involved in the activities of a trade union, among others.

The law also explicitly prohibits the termination of employment of an employee on injury leave.

A termination may also be deemed unfair, despite there being good and sufficient cause, if the termination is deemed to be discriminatory.

8. Disputes

8.1 Wrongful Dismissal

Maltese law contemplates the possibility for employees to claim “unfair dismissal”, which would be termination without just cause, or which is discriminatory, or in cases of early termination of fixed-term contracts. The burden to prove that the termination was lawful rests with the employer. Although not expressly regulated by law, the tribunals and courts also recognise the concept of constructive dismissal, whereby the employee would resign in protest and claim compensation for having been forced to abandon the employment; in such cases, the burden of proof would be on the employee.

The law makes no specific reference to the concept of “wrongful dismissal”, that being a claim based in contract law for breach of contract. That being said, in so far as there is a breach of contract, the employee would be able to raise that as a fact corroborating the unfair dismissal, keeping in mind that when a tribunal liquidates compensation for unfair dismissal, it is entitled to take into account all relevant considerations, including damages arising out of a breach of contract. An employee may also raise a claim for damages arising out of breach of contract before the civil courts and may also seek a remedy for the performance of the contract.

In certain cases, employees may also have recourse to the Department of Employment and Industrial Relations, which, in turn, has the competence to investigate and, if need be, prosecute offences committed in breach of employment law.

8.2 Anti-Discrimination

Anti-Discrimination Grounds

Protection against discrimination is one of the fundamental rights and freedoms enshrined within the Maltese Constitution and it effectively protects persons from being discriminated against in every aspect of work life.

The EIRA broadly defines discriminatory treatment as any distinction, exclusion or restriction which is not justifiable in a democratic society. This includes, but is not limited to, discrimination on the grounds of pregnancy, disability and gender. The list of grounds provided for in the EIRA is non-exhaustive in nature and therefore, although not specifically mentioned therein, age or sexual orientation can also be deemed as grounds on which to claim that treatment was discriminatory, provided that the distinction, exclusion or restriction in question is not otherwise justifiable.

The EIRA also prohibits discriminatory treatment throughout the employment life cycle, in that discriminatory treatment is unlawful at the recruitment stage, during the employment relationship and during termination.

Differential treatment may be justified and is not deemed discriminatory – taking into account the

nature of the vacancy to be filled or the employment offered – where a required characteristic constitutes a genuine and determining occupational requirement, or where the requirements are established by applicable laws or regulations.

The law also protects part-timers and fixed-term contract employees from being discriminated against by virtue of their employment status.

Burden of Proof

An employee claiming discrimination must merely establish a *prima facie* case sufficient to indicate discriminatory treatment. Once the employee succeeds in showing a *prima facie* case of discrimination, it is then up to the employer to prove the contrary.

Employers are obliged to respond to queries alleging discrimination within a fixed period of time.

Damages and Relief

An employee who alleges that they have been subjected to discriminatory treatment must file a claim before the Industrial Tribunal within four months of the alleged breach. Should an employee succeed in their claim against the employer, the employee will be entitled to monetary compensation. It is worth noting that the parties are free to reach an out-of-court settlement at any point during the proceedings.

There is no statutory formula by which the tribunal determines compensation. However, in determining the amount of such compensation, the tribunal must take into consideration the real damages and losses incurred by the worker who was unjustly dismissed, as well as other circumstances, including the worker’s age and skills, that may affect the employment potential of said worker. Employees are expected to mitigate their losses.

8.3 Digitalisation

No regulations have been enacted by the Maltese legislature in relation to the digitalisation of employment disputes. However, in view of the Industrial Tribunal being able to regulate its own procedures in so far as the principles of natural justice are adhered to, the COVID-19 pandemic has spurred the Industrial Tribunal to be more willing to accept witnesses giving

testimony via videoconferencing if they are unable to testify in person.

9. Dispute Resolution

9.1 Litigation

Employment Forums

Employees are entitled by law to raise various complaints should they arise. The competent authority before which a complaint must be brought varies depending on the nature of the claim in question.

The Industrial Tribunal in Malta is the competent forum to hear claims relating to unfair dismissals, trade disputes, and other specialised employment law disputes, such as discrimination, harassment and victimisation.

Employees may also lodge certain claims, mainly contractual, before the civil courts, as well as seek intervention from competent authorities in the event of offences against the law, such as the Department of Employment and Industrial Relations, the Office of the Information and Data Protection Commissioner, as well as the National Commission for the Promotion of Equality.

The EIRA does not expressly cater for class actions to be brought before the Maltese Industrial Tribunal; however, there are instances where a dispute/claim may be filed on behalf of several employees contemporaneously.

The Industrial Tribunal

The Industrial Tribunal is free to regulate its own procedures; however, it is expected to abide by the rules of natural justice and decide the case at hand based on its substantive merits. The Tribunal is vested with the powers of the courts in accordance with the Code of Organisation and Civil Procedure.

The configuration of the Tribunal is determined depending on the issue at hand. In disputes that relate to conditions of employment, the Tribunal is composed of one chairperson, whereas where the situation relates to industrial relations, the Tribunal is

composed of a chairperson and two other members who are selected by the chairperson of the tribunal.

Sittings before the Tribunal are generally open to the public, although the Tribunal may decide that a case should proceed behind closed doors.

The process before the Industrial Tribunal begins with an application being filed. The Tribunal then allows time for the defendant to rebut the allegations by means of filing a reply. A practice generally adopted by the Tribunal is that of asking whether the parties have sought to resolve the matter amicably prior to moving forward with proceedings. Following the reply being filed, and provided that the parties have not reached an out-of-court settlement, the parties are then given the opportunity to support their case with evidence and oral and/or written pleadings. It is worth noting that the parties may reach a settlement at any point during the proceedings prior to the final decision.

Although Maltese law delineates that the Tribunal must decide cases within one month, the vast majority of cases are not decided within this period. On average, cases are not determined before one to two years have passed, and this may be extended in the case of an appeal.

9.2 Alternative Dispute Resolution

The EIRA refers to the exclusive jurisdiction of the tribunal in certain instances, and therefore it is argued that the possibility to arbitrate is limited. While Maltese law does not expressly prohibit pre-dispute arbitration agreements in employment disputes, neither does it provide that pre-dispute arbitration agreements are enforceable; therefore, these may be disputed, particularly in cases where the tribunal is declared to have exclusivity.

9.3 Costs

Prevailing employees are generally reinstated and/or awarded monetary compensation. The tribunal will typically award a token payment towards representation costs, and the parties are otherwise expected to cover their own costs and legal fees.

MEXICO



Law and Practice

Contributed by:

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Cannizzo, Ortiz y Asociados, S.C. was established in Mexico more than 40 years ago and is an excellent gateway for doing business in Mexico, thanks to its international experience in approaching legal practice and its deep understanding of the Mexican reality. The firm assists its clients with matters relating to employment relationships and the laws regulating them. Its practice comprises both individual and collective matters. It also represents its clients in the negotiation and execution of collective bargaining agreements with labour unions and the correspond-

ing filing before the competent authorities. Its labour and employment team is ready and able to support its clients to be in compliance with the recent amendments to the Federal Labour Law, including the negotiation and execution of bargaining agreements under the new provisions, as well as in the actions required to address the amendments to outsourcing regulation in Mexico. The authors would like to thank Stefano Amato, partner, and Andrea Andrade, associate, for their contribution to this chapter.

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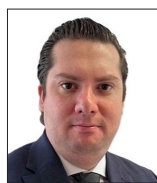
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1. Employment Terms

1.1 Employee Status

Although in practice there is a difference between blue-collar and white-collar employees, this difference does not derive from the law. The Federal Labour Law provides for several types of employees, namely the following:

- Employees in positions of trust (*empleados de confianza*): These are employees who perform management, inspection, supervision and oversight tasks, when they are of a general nature, or the personal work of the employer within the company or establishment. The category of trusted employees depends on the nature of the tasks performed and not on the name given to the position.
- Employees who render their services for a Mexican employer outside the national territory: The Federal Labour Law provides special rights for such employees under Article 28.
- The Federal Labour Law contains several chapters addressing the status of various types of employees and providing specific rights and protections to each of them, for example, women workers, workers between the ages of 15 and 18, trusted employees, employees working on ships, aircraft crew, railway workers, auto transport workers, public service freight manoeuvring workers, farm workers, commercial agents, professional sportspersons, musicians and actors, domestic workers, teleworkers, mine workers, workers in hotels, restaurants, bars and other similar establishments, workers in a family industry, doctors, workers in educational institutions, among others.
- Employees employed for a specific task, whether for a fixed term, seasonally or for an indefinite term: See **1.2 Employment Contracts** for more information.

1.2 Employment Contracts

In Mexico, employment relationships may be: (i) for a specific task (*obra determinada*), which may only be agreed upon when its nature so requires; (ii) for a fixed term (*por tiempo determinado*), which may only be agreed upon when required by the nature of the work to be performed, when the purpose thereof is to temporarily replace another employee, and in other cases

provided by the Federal Labour Law (for example, the duration of labour relationships for the exploitation of mines lacking profitable minerals or for the restoration of abandoned mines or mines at a standstill may be agreed upon for a specific task, for a fixed term or for the investment of specific capital); (iii) seasonal (*por temporada*); and (iv) for an indefinite term (*por tiempo indeterminado*). The last of these, in turn, may be subject to a probation period (*prueba*) or initial training (*capacitación inicial*).

In the absence of any express stipulation otherwise, the employment relationship is understood to be for an indefinite term.

In terms of the Federal Labour Law, working conditions must be agreed in writing if there is no applicable collective bargaining agreement in place, and such a document must be executed in at least two counterparts, one for each party. The document must contain at least the following:

- name, nationality, age, sex, marital status, Unique Population Registry Code (*Clave Única de Registro de Población*, or CURP), Federal Taxpayer Registry Code and address of the employee and the employer;
- whether the employment relationship is for a specific task or term, seasonal, or for an indefinite term and, if so, whether it is subject to an initial training period or probation period;
- the service or services to be rendered, which shall be specified as accurately as possible;
- the place or places where the work is to be performed;
- the duration of the workday;
- the form and amount of the salary;
- the day and place of payment of the salary;
- the specification that the employee will be trained in accordance with the plans and programmes set forth or to be determined in the company;
- other working conditions, such as rest days, holidays and others, agreed upon between the employee and the employer; and
- designation of beneficiaries for the payment of wages and benefits accrued but not collected prior to the death or disappearance of the employee.

The lack of a written labour agreement does not prevent the employee from exercising their rights derived from the applicable labour provisions and from the services rendered and shall not be interpreted as the lack of existence of a labour relationship, as this formality is considered the responsibility of the employer.

1.3 Working Hours

Although the employer and the employee may agree on the duration of the workday, in no case may it exceed the legal limits.

The legal limits are: (i) for a day shift – ie, between 6am and 8pm, eight hours per day; (ii) for a night shift – ie, between 8pm and 6am, seven hours per day; and (iii) for a mixed shift – ie, which includes both day and night shifts, limited to seven and a half hours per day, provided that the night period is less than three and a half hours.

Additionally, during the continuous workday, the employee must be granted a period of rest of at least half an hour, and if the employee cannot leave the place where they render their services during rest or meal hours, the corresponding time will be counted as effective time of the workday.

Regarding overtime, the law provides that the workday may be extended in extraordinary circumstances, but by no more than three hours per day and three times in a week. These hours of extraordinary work must be paid 100% more than the salary corresponding to the hours of the ordinary workday. If the extraordinary work exceeds nine hours per week, the employer must pay 200% more than the salary corresponding to the hours of the ordinary workday, without prejudice to the applicable sanctions for doing so.

Although there is no specific regulation for part-time contracts, according to the law, the employee and the employer may freely allocate the working hours and they may do so in a way that allows the employee to rest on Saturday afternoon, or any equivalent modality.

Furthermore, following a reform to Article 21, Section IV of the General Law for Preventing, Sanctioning, and Eradicating Crimes in Human Trafficking and for the

Protection and Assistance of Victims of These Crimes, which came into effect on 7 June 2024, significant changes shall apply to labour relations. Per the reform, the concept of labour exploitation is expanded to include not only hazardous and unhealthy conditions, disproportionate workloads, and/or wages below the minimum wage but also workdays that exceed those established by the Federal Labour Law. Per this modification, workdays that exceed 48 hours per week, plus the overtime hours established by the Federal Labour Law, or that exceed the maximum workday established conventionally in contracts, will be subject to severe sanctions for being considered labour exploitation, regardless of whether workers agree and even if they are properly paid for excess hours. This new regulation has determined that a workday involving labour exploitation will be punished with a prison sentence of three to ten years, as well as fines ranging from MXN565,700 to MXN5,657,000. When the individuals affected are members of Indigenous and Afro-Mexican communities, the punishment can range from four to 12 years of imprisonment and fines ranging from MXN791,980 to MXN7,919,800. Employers shall require precise control of working hours to avoid exceeding the limit and becoming subject to such sanctions.

1.4 Compensation

In Mexico, the minimum wage (*salario mínimo*) is the minimum guaranteed amount that an employee is entitled to receive in cash for services rendered in a workday.

The minimum wages in Mexico are determined by the National Minimum Wages Commission (*Comisión Nacional de los Salarios Mínimos*) (made up of representatives of employees, employers and the government), whose most recent resolution was issued on 19 December 2024 and published in the Official Federal Gazette. This resolution outlines (i) general minimum wages (applicable to all employees in specific geographic areas, regardless of the industry, profession, trade, or specialised roles) and (ii) professional minimum wages (which apply to employees in specific sectors or occupations within certain geographic areas). Mexico is divided into two geographic zones for the purpose of determining these minimum wages: (i) the Northern Border Free Zone (*Zona Libre*

de la Frontera Norte), a 25 km strip south of the US border, and (ii) the rest of the country. For 2025, the general minimum wage in the Northern Border Free Zone is MXN419.88, while in the rest of the country it is MXN278.80 – representing a 12% increase compared to the previous year.

The annual determination of minimum wages, or the revision thereof, in terms of the law, may never be below the inflation accrued during the period elapsed from its last revision.

Wages, in general terms, are protected by legal provisions, including those prohibiting, for example, the minimum wage from being subject to offset (*compensación*), discount or reduction, except in certain cases, and those establishing that the wages that are to be paid in cash must be paid in legal tender and that the currency may not be substituted by merchandise, vouchers, tokens or other items.

Employees are entitled to a Christmas bonus which, pursuant to the Federal Labour Law, must be paid before 20 December to employees who have completed one year of service and must be equal to at least 15 days of salary. Those employees who have not completed one year of service are entitled to be paid the proportional part of the bonus.

Furthermore, employees are entitled to participate in the profits of enterprises (*Participación de los Trabajadores en las Utilidades*, or PTU) in accordance with the percentage determined by the National Commission for the Participation of Employees in the Profits of Enterprises (*Comisión Nacional para la Participación de los Trabajadores en las Utilidades de las Empresas*). Such percentage, as determined by the Commission, is currently 10% of the employer's annual profits. The basis for the calculation of the annual PTU payable to the employees of an enterprise is determined by the profit of such enterprise as calculated in accordance with the Income Tax Law in Mexico and currently takes into account the taxable profit of the employer during a tax year. However, certain adjustments are made in accordance with Article 16 of the Income Tax Law in order to calculate the basis for PTU (for example, for PTU purposes, dividends received by the company from other corporations are considered as profits,

among others). Therefore, there might be a difference between the actual taxable income and the basis for the PTU.

The amount of PTU to be distributed among the employees is divided into two equal shares. The first one takes into account the days worked by each employee during the year, regardless of the amount of their salary, while the second share is distributed in proportion to the amount of the salary paid in relation to the work performed during the year.

Directors, administrators and general managers are not entitled to any PTU payment. Each non-unionised employee is entitled to a PTU payment; however, if their salary is higher than the highest salary of the unionised employees, such highest salary, increased by 20%, shall be taken into account as a maximum limit for the purpose of calculating the PTU payment.

The PTU payable to each employee cannot be higher than (i) three months of their current salary or (ii) the average of the PTU paid to such employee during the last three years, whichever is higher.

The following enterprises have no obligation to pay any PTU: (i) those newly incorporated, in relation to the first year; (ii) those developing new products, in relation to the first two years; and (iii) decentralised public institutions with assistance, charitable or cultural purposes, among others.

Additional incentives such as bonuses or punctuality or attendance premiums are neither mandatory nor regulated by law but can be freely included in employment agreements.

1.5 Other Employment Terms

Vacations

Employees who have rendered their services for more than one year are entitled to an annual period of paid vacation, which in no case may be less than 12 working days, and which will be increased by two working days for each subsequent year of service, until it reaches 20 days. Vacation days may be taken continuously, with the option for the worker to unilaterally decide to distribute the annual period of paid vacation as needed.

The labour law clearly provides that vacations cannot be compensated with remuneration. Employees are entitled to a vacation bonus (*prima vacacional*) of no less than 25% of the wages payable during the vacation period.

Leave

Pursuant to the Federal Labour Law, women are entitled to the following types of leave.

- A six-week paid leave before and six weeks after childbirth: At the express request of the employee, with the prior written authorisation of the physician of the corresponding social security institution or, if applicable, of the health service provided by the employer, taking into account the opinion of the employer and the nature of the work performed, up to four of the six weeks of leave prior to childbirth may be transferred to after childbirth. This period may be increased up to eight weeks after the childbirth, upon presentation of the corresponding medical certificate, in the event that the child was born with any type of disability or requires hospital medical care.
- In case of adoption of an infant, the woman shall enjoy a six-week paid leave following the day on which she receives the child.

For male employees, the law only sets forth that the employer must grant them paid paternity leave of five working days for the birth of their children and likewise in the case of the adoption of an infant.

With respect to absences due to illness, Mexican labour law distinguishes between non-work-related illnesses, which are generally covered by the Mexican Social Security Institute (*Instituto Mexicano del Seguro Social*), and those derived from an occupational accident or occupational illness, which are covered by the employer. In the chapter of the Federal Labour Law called “Occupational Risks” (*Riesgos de Trabajo*) it is clearly set forth what is to be understood by occupational accident and by occupational illness, namely, an occupational accident is any organic injury or functional disturbance, whether immediate or subsequent, or death or disappearance derived from a delinquent act, suddenly produced in the course of or in connection with work, whatever the place and time in which

the work is performed (including accidents that occur when the employee is travelling directly from his/her home to the workplace and vice versa), whereas an occupational illness is any pathological condition resulting from the action over a longer period of time of a cause having its origin in the work or in the environment in which the employee must render his/her services.

Confidentiality and Non-Disparagement Requirements

The Federal Labour Law does not expressly regulate the confidentiality obligations that an employee must comply with before his/her employer; these are usually included in the labour agreements between the parties. In this type of agreement, it is usually agreed that the confidentiality obligation of the employee will last for a certain term after the termination of his/her employment relationship with the employer.

However, the employee’s obligation of confidentiality towards the employer might be interpreted as included in Article 47 of the Federal Labour Law, which provides the employer the right to terminate the employment relationship without liability, among others, if the employee commits, during his/her work, any breach of probity or honesty against the employer, his/her relatives or the management or administrative personnel of the company or establishment, or against the employer’s customers and suppliers, as well as if the employee reveals trade secrets or discloses matters of a confidential nature, to the detriment of the company, or similar acts.

In addition, the Federal Law for the Protection of Industrial Property (*Ley Federal de Protección a la Propiedad Industrial*) defines as industrial secrets any information of industrial or commercial application which is kept confidential by the person exercising legal control over it, and implies obtaining or maintaining a competitive or economic advantage over third parties in the performance of economic activities and with respect to which it has adopted sufficient means or systems to preserve its confidentiality and restricted access. Such law could be applied to employees who misappropriate any industrial secret or intellectual property of their employer. Misappropriation is understood as the acquisition, use or dis-

closure of any industrial secret in a manner contrary to good industrial commercial and service customs and practices, that involves unfair competition. It may also be applied to any third party that acquires, uses or discloses an industrial secret if it knew, or had reasonable grounds to know, that the industrial secret was acquired in a manner contrary to such customs and practices.

Outsourcing

In 2021, a decree was published to amend labour, social security, and tax regulations, prohibiting the outsourcing of personnel, except for specialised services and/or specialised works not included in the corporate purpose or main economic activities of the beneficiary of such services. According to such provisions, outsourcing occurs when an employer provides or makes its personnel available to a third party, which benefits from the services rendered by such personnel. The subcontracting of specialised services or works must be formalised through a written contract detailing the services or works and the approximate number of workers involved. If a contractor fails to meet its obligations to its workers, the hiring party will be jointly responsible. According to Article 15 of the Federal Labour Law, individuals or entities providing outsourcing services must be registered with a publicly available registry maintained by the Ministry of Labour and Social Welfare (*Registro de Prestadoras de Servicios Especializados u Obras Especializadas*, or REPSE), and ensure they are up to date with their tax and social security obligations. The corresponding registration must be renewed every three years, and the Ministry of Labour and Social Welfare may deny or revoke registration at any time if those individuals or legal entities fail to comply with the necessary requirements.

2. Restrictive Covenants

2.1 Non-Competes

Non-compete clauses – ie, clauses included in a contract by which a person undertakes the obligation not to compete in a certain market or activity with another person – are not provided for in Mexican labour law; however, they may be agreed between the parties in

employment agreements or separate non-compete agreements.

The consequence of breaching a non-compete clause is usually the obligation to compensate or indemnify the affected party. Regarding non-compete obligations, it is important to keep in mind that in Mexico the protection of damages might be limited, contrary to what happens in other countries. In Mexico, it might be difficult to prove liability arising from a non-compete violation and the specific damages arising from this violation. Even when the violation and damages are proved, Mexican courts usually do not impose exemplary penalties or remedies as happens in other jurisdictions.

Given the difficulty of evidencing before the judicial authority a causal relationship between the conduct performed – ie, the breach of a non-compete obligation, and the damages suffered by the affected party, it is usual to include in non-compete agreements stipulations obliging the breaching party to pay a certain amount in the event of breach – ie, pre-quantified damages.

The enforceability of this type of non-compete obligation is usually approached from two perspectives.

- **Constitutional:** This is because such obligations have been considered a violation of the right to freedom of work. The Mexican Constitution states that no person may be prevented from performing their choice of work, provided that it is lawful, except by means of a judicial resolution, and that any agreement by virtue of which an individual temporarily or permanently waives the right to pursue a certain profession, industry or trade may not be allowed. Therefore, it will be important to consider certain requirements and characteristics when drafting the non-compete obligations that employers may require, so that they do not constitute a waiver of the right to perform, throughout the national territory, any given profession, industry, work or trade.
- **Economic competition:** This is because the obligation not to compete may be considered a monopolistic practice. Regarding this aspect, non-competition obligations will be valid when they are

duly limited as to time, territory, subject matter and persons.

2.2 Non-Solicits

Non-solicitation clauses are not explicitly addressed under Mexican labour law; however, they can be legally agreed between the parties in employment agreements or in separate non-solicitation agreements. The ordinary consequence of breaching a non-solicitation clause is the obligation to compensate or indemnify the affected party. Regarding non-solicitation obligations, it is important to keep in mind that in Mexico the protection of damages might be limited, contrary to what happens in other countries. In Mexico, it might be difficult to prove the liability derived from a non-solicitation violation and the specific damages derived from this violation. Even when the violation and damages are proved, Mexican courts usually do not impose exemplary penalties or remedies as happens in other jurisdictions.

Given the difficulty of evidencing before the judicial authority a causal relationship between the conduct performed – ie, the breach of a non-solicitation obligation, and the damages suffered by the affected party – it is common to include in the non-solicitation agreement stipulations obliging the breaching party to pay a certain amount in the event of breach – ie, pre-quantified damages.

The enforceability of this type of non-solicitation obligation, as well as non-compete obligations, may be challenged for their alleged unconstitutionality, since they may be considered as violating Article 5 of the Mexican Constitution, which states that no person may be prevented from performing their work of choice, provided that it is lawful, and such right may only be banned by judicial resolution.

3. Data Privacy

3.1 Data Privacy Law and Employment

In Mexico, there are different personal data protection laws whose application depends on the data subject being regulated. The private sector is regulated by the Federal Law for the Protection of Personal Data in Possession of Private Parties (*Ley Federal de Pro-*

tección de Datos Personales en Posesión de Particulares).

By virtue of the above-mentioned law, those persons processing data have the obligation to protect the personal data they process, to respect the principles set forth in the law, namely legality, consent, information, quality, purpose, loyalty and proportionality, and to respect the right of the individuals whose data is being processed to informational self-determination, as well as to guarantee the exercise of their rights of access, rectification, cancellation and opposition to the processing of their personal data.

It is important to point out that in addition to the obligations towards employees with respect to the protection of their personal data arising from the above-mentioned law, the employer also has the obligation to protect personal data with respect to other data subjects, such as prospective employees, clients, suppliers, partners, shareholders, etc.

4. Foreign Workers

4.1 Limitations on Foreign Workers

In terms of Mexican labour law, except for directors, administrators and general managers:

- in any enterprise or establishment, the employer must employ at least 90% Mexican employees;
- in the categories of technicians and professionals, the employees must all be Mexicans, unless there are not enough Mexicans who possess a given specialism, in which case the employer may temporarily employ foreign employees, in a proportion not exceeding 10% of those engaged in that specialism; in any case, the employer and the foreign employees will have the joint obligation to train Mexican employees in the relevant specialism; and
- medical practitioners who work in the service of an enterprise must be Mexican.

4.2 Registration Requirements for Foreign Workers

In Mexico, in order to hire foreign employees, an employer must obtain, before the office of the National

Immigration Institute (*Instituto Nacional de Migración*) where the employer's establishment is located, an employer's registration certificate (*constancia de inscripción del empleador*) that allows individuals and legal entities to issue job offers to foreign individuals.

In addition to the foregoing, a foreign individual rendering services to a Mexican employer must hold an immigration document evidencing their legal right to stay in the country. The procedure for obtaining such a document is usually carried out by the employer with the intervention of the foreign individual.

The status under which foreign individuals usually stay in Mexico is that of temporary resident (*residente temporal*), which authorises them to stay in the country for a period no longer than four years. Temporary residents may obtain a work permit, subject to an offer of employment, which will give them the right to work in the country and enter and leave the national territory as many times as they wish, as well as the right to preserve the family unit – ie, a foreign individual may enter with, or eventually request access for, their parents, spouse, concubine, children or spouse's or concubine's children, provided they are minors, unmarried, or under the individual's legal guardianship.

5. New Work

5.1 Mobile Work

On 8 June 2023, the Official Mexican Standard NOM-037-STPS-2023, Teleworking Occupational Safety and Health Conditions (hereinafter the “NOM-037”), was published in the Mexican Official Gazette of the Federation. The purpose of NOM-037 is to establish safety and health conditions in the places where teleworkers perform their duties to prevent accidents, illnesses, or psychosocial risk factors. It applies to both employers and workers working under the telework modality, either partially or fully. Companies will have the following obligations when it comes to teleworking:

- They must maintain an updated list of employees working in this modality, including relevant details such as their name, gender, marital status, job activities, the proportion of their working time spent

telecommuting, contact information and agreed-upon work locations.

- Work locations must now be fixed and registered in the Collective Bargaining Agreement or Internal Work Regulations.
- Employers are responsible for ensuring safe and healthy working conditions, including electrical installations, lighting and ventilation, and necessary tools/furniture for their work activities, both at the workplace and in remote locations, that allow workers to perform their tasks safely and efficiently.
- The validation and assessment of potential risks should be carried out by the employer or professionals appointed in the respective field. This assessment must be conducted before telework begins and should be documented.
- Employers must provide adequate training on the safe use of tools and on the occupational hazards associated with teleworking, and to do so they must develop a comprehensive telecommuting policy, which must be implemented, maintained and effectively communicated to employees.
- It is mandatory for employers to monitor the health status of teleworkers, ensuring that there are no risks associated with ergonomics, stress, eyestrain, among others.
- Employers must address work accident reports from remote employees or their family members, adhering to protocols established by social security institutions.

Employees under NOM-037 are required to allow physical verification or use a checklist to ensure safety and health conditions at their workplace. This includes providing evidence like photos or videos to demonstrate suitable workspaces. Employees who take part in remote work as per the previously discussed criteria will have the same individual and collective rights as in-person employees, meaning they can unionise, engage in collective bargaining and stay connected with colleagues. Employees also have the right to disconnect, complying with designated working hours and avoid work-related activities during vacation or leave. Special protection is granted to those employees experiencing domestic violence and to breastfeeding women.

NOM-037 became effective on 6 December 2023 and applies nationwide. The employer will have the option to hire the services of an accredited and approved inspection unit, in accordance with the Law of Quality Infrastructure (*Ley de Infraestructura de la Calidad y su Reglamento*) and its regulation, to assess compliance with NOM-037, in which case a report containing information about the verified remote workplace would be issued. This report will be valid for two years, as long as the conditions existing upon issuance of the report remain unchanged. Non-compliance with safety regulations may result in fines ranging from 250 to 5,000 times the Unit of Measurement and Update (MXN28,285.00 to MXN565,700.00).

5.2 Sabbaticals

Mexican labour regulations do not address sabbatical leave. Nevertheless, employers and employees may negotiate and establish sabbatical leave arrangements through employment contracts, collective bargaining agreements or internal policies. If employer and employee reach an agreement regarding sabbatical leave, the details and terms of the sabbatical, such as duration, salary, benefits and job security upon return, should be outlined clearly in the employment contract or a separate agreement.

Alternatively, unpaid leave could be arranged between employer and employee either through a separate agreement or outlined in company policy, though this option may have certain implications for employee benefits and rights. In any case, any terms and conditions should be outlined and agreed upon by employee and employer.

5.3 Other New Manifestations

Currently, various emerging concepts, such as desk sharing, flexible working hours, remote work, four-day weeks, digital nomadism and sabbaticals are encompassed under the term “new work”. This concept aims to redefine the traditional notion of a workplace in response to technological advancements. Companies often adopt these practices to enhance their appeal and attract talented individuals. However, these new work arrangements require structural changes that depart from conventional workplace norms and hierarchies.

Although Mexican regulations and legislators have not specifically addressed or regulated these “new work” tools yet, companies and entrepreneurs in Mexico are actively embracing these innovative approaches to work, recognising the potential benefits they offer in terms of employee satisfaction, productivity and overall business performance. Consequently, any benefits associated with “new work” in practice have so far been addressed through employment contracts that outline the terms and conditions of these arrangements, and/or through the establishment of internal policies to govern their implementation within companies.

Digital Platforms

Following a 2024 reform to the Federal Labour Law and relevant regulatory criteria, additional obligations apply to individuals providing services through digital platforms, including food delivery, courier, ride-hailing, or similar services.

Under these provisions, digital platform workers are expressly recognised as employees when they provide services personally, on a continuous basis, and are subject to the management or direction of the platform, including algorithmic control over schedules, assignments, or compensation. Regardless of the flexibility associated with digital platforms, working hours must comply with the maximum legal thresholds established by the Federal Labour Law, including the limits on overtime.

Employers (digital platforms) are required to, inter alia:

- register platform workers with the Mexican Social Security Institute (*Instituto Mexicano del Seguro Social*, or IMSS);
- ensure precise tracking of working hours through the platform’s technological tools (eg, logs, records of active connection periods, delivery time slots);
- guarantee that working hours do not exceed 48 hours per week plus the maximum authorised overtime;
- provide benefits such as paid rest days, vacation, bonuses and profit sharing;
- register and submit labour contracts for approval by the Federal Conciliation and Registration Centre; and

- disclose how algorithms determine assignments and working conditions and issue an algorithmic management policy.

Non-compliance carries fines of up to MXN2.7 million. The reform took effect on 23 June 2025, with further rules and a pilot programme to follow.

Reduction of Working Hours

One of the central issues on Mexico's 2025 labour agenda is the reduction of the working hours from 48 to 40 hours per week. Although this initiative has not been approved, the federal government officially announced that the 40-hour working week would be implemented gradually with a view to being completed by January 2030. This initiative represents a crucial shift in the country's labour dynamics.

The transition to a 40-hour working week, however, requires a clear implementation plan. Companies, especially small and medium-sized ones, will need to adapt to new organisational structures, and it is crucial that the government and labour authorities provide support in terms of training and flexibility. In addition, rigorous monitoring will be necessary to prevent the reduction in hours from translating into increased labour intensity or overloaded workdays.

Reducing the working day in Mexico is a strategic proposal that could result in significant change for workers and companies.

6. Collective Relations

6.1 Unions

Labour unions in Mexico are understood as associations of employees that are formed for the study, improvement and defence of their interests. Both employers and employees have the right, without any distinction and without prior authorisation, to form the organisations they deem convenient, as well as to join them, with the only condition of observing their corresponding by-laws.

Both types of unions enjoy protection under the law against any act of interference between them relating to their formation, operation or administration.

Any action or measure to promote the formation of employees' organisations with the purpose of placing them under the employer's control is considered an act of interference.

In 2018, Mexico ratified Convention C098 of the International Labour Organization, concerning the Right to Organise and Collective Bargaining, which establishes fundamental rights related to trade union freedom and collective bargaining. Following this ratification, a significant constitutional reform in labour matters came into effect, which not only established new foundations for labour justice but also amended various provisions related to trade unions. Notably, the reform addressed freedom of association and effective representation, including the prohibition of employee unions created or controlled by employers for their own benefit – a practice that had been prevalent. This constitutional reform paved the way for subsequent secondary labour reforms enacted in 2019.

The 2019 labour reform aimed to align national legislation with the principles set forth in Convention C098. Key changes introduced by this reform included the promotion of union autonomy through the establishment of democratic trade unions, thereby enhancing workers' control and participation in decision-making processes. Additionally, the reform strengthened collective bargaining by instituting labour courts responsible for ensuring the enforcement of collective agreements and promoting transparency in their negotiation.

While these reforms mark significant progress towards compliance with Convention C098, the principal challenge remains the effective implementation across the country, particularly within informal sectors and regions where traditional unions maintain considerable influence. Consequently, these reforms necessitated the modification or revision of conventional union structures in Mexico to safeguard employees' freedom of association. Ultimately, the reforms seek to foster a more active and meaningful role for employees in union affairs.

6.2 Employee Representative Bodies

The role of employees' unions is to study, defend and improve the interests of their members. Their incor-

poration must be made before the Federal Centre for Labour Conciliation and Registration (*Centro Federal de Conciliación y Registro Laboral*, or CFCRL). Unions, as well as collective bargaining agreements and the agreements and regulations entered between employers and employees, must be registered before the CFCRL. A union registers itself by submitting several documents, including a copy of the minutes of the incorporation meeting, a list containing the names, telephone numbers, CURP numbers and addresses of its members, an authorised copy of the by-laws and an authorised copy of the minutes of the meeting in which the board of directors was appointed.

Local and federal conciliation centres are authorised to carry out labour conciliations between employers and unions. Previously, this used to be the competence of the local and federal conciliation and arbitration boards.

6.3 Collective Bargaining Agreements

Pursuant to the Federal Labour Law, a collective bargaining agreement is an agreement entered between one or more labour unions and one or more employers, or one or more employers' unions, to set forth the conditions under which work is to be performed at one or more companies or establishments.

In order for a labour union to enter into a collective bargaining agreement with an employer, the labour union must first obtain "Evidence of Representation" (*Constancia de Representatividad*), which is issued by the Federal Centre for Labour Conciliation and Registration. This requirement ensures the principles of representativeness in trade union organisations and provides certainty in the signing, registration, and filing of collective bargaining agreements.

Once the above is complied with, the collective bargaining agreement must be approved by the employees, and the employer must not intervene in the consultation procedure.

Once the employees approve the clauses of the collective bargaining agreement, it must be executed in writing, in three counterparts, failing which the agreement shall be null and void. One copy must be delivered to each of the parties and the other copy must

be deposited with the CFCRL, who will verify that its content has been approved by the majority of employees covered by such agreement.

Collective bargaining agreements are effective from the date and time of presentation of the document, unless the parties have agreed on a different date.

It should be noted that for the registration of an initial collective bargaining agreement or a revision agreement, the CFCRL verifies that its content has been approved through a personal, free and secret vote by the majority of the employees the agreement refers to. In this sense, one of the relevant effects of the reforms of 2019 referred to in **6.1 Unions** is that employees are authorised to join a union, federation or confederation and to be consulted through personal, free, secret and direct voting for, among other things, the union to sign initial collective bargaining agreements, and to approve amendments and revisions to those collective bargaining agreements, as well as to legitimise existing collective bargaining agreements. It is important to note that the legitimisation of collective bargaining agreements is a commitment originally acquired under the US-Canada-Mexico Agreement (USMCA). On 1 May 2023, the deadline to legitimise collective bargaining agreements under the aforementioned arrangement elapsed. Consequently, any agreements that were not submitted by unions for the legitimisation procedure have been terminated in accordance with Mexican regulation.

If an employer refuses to sign the agreement, its employees may exercise their right to strike or to extend or prolong the pre-strike period in order to continue negotiations and to submit the agreement to further consultation.

Once the legitimisation period has elapsed, workers still retain the right to enter into collective bargaining agreements; however, they must now follow the process outlined per the new labour model, negotiating a new agreement which must be approved through the workers' personal, free, direct, and secret voting.

7. Termination

7.1 Grounds for Termination

Grounds for Termination

In terms of the Federal Labour Law, there are three main categories of grounds for termination of labour relationships.

- The first category of grounds for termination are provided by law (Article 53 of the Federal Labour Law), namely: (i) mutual consent of the parties; (ii) death of the employee; (iii) termination of the work or expiration of the term or investment of the capital; and (iv) physical or mental incapacity or manifest inability of the employee, which makes it impossible to perform the work.
- The second category of grounds, pursuant to Article 47 of the Federal Labour Law, entitle the employer to dismiss the employee without any liability (without paying in the employee's favour the corresponding severance). The employer who dismisses an employee must give written notice clearly stating the conduct or conducts that motivated the termination and the date or dates on which they were committed, delivering the notice personally to the employee at the moment of dismissal or, alternatively, communicating it to the competent court, in which case the employer must provide the employee's last registered address in order to allow the authority to notify the employee. In the event that the employer fails to provide the employee with a notice of termination, established jurisprudence holds that the employer may present sufficient evidence during trial to demonstrate that the dismissal was justified. If, in the corresponding legal procedure, the employer does not prove the causes of the termination, the employee will be entitled to request their reinstatement in the job they were performing, or the corresponding compensation, and to be paid their overdue wages, calculated from the date of dismissal for up to 12 months, plus interest, where applicable.
- The third category of grounds, pursuant to Article 51 of the Federal Labour Law, entitle the employee to terminate the labour relationship without any liability. The employee has 30 days following the date on which any of the causes mentioned in Article 51 occur, to terminate the labour relationship,

and they shall be entitled to indemnification by the employer.

Collective Redundancies

With respect to the collective termination of employment relationships, Article 434 of the Federal Labour Law provides that the causes for termination of these employment relationships are causes of force majeure or acts of God not attributable to the employer, or the employer's physical or mental incapacity or death, which produce as a necessary, immediate and direct consequence, the suspension of works; the manifest unprofitability of the operation; the exhaustion of the material object of an extractive industry; the legally declared insolvency or bankruptcy of the employer, if as a result the definitive closure of the company or the definitive reduction of its work is decided by resolution; and some additional specific events for certain industries.

In most of the above-mentioned cases, notice must be given to the labour authority, or authorisation must be obtained from the labour authority, to proceed with the termination.

7.2 Notice Periods

As discussed in 7.1 Grounds for Termination, an employer that dismisses an employee based on any of the grounds for termination mentioned in Article 47 of the Federal Labour Law must give written notice clearly stating the conduct(s) that motivated the termination and the date(s) on which they were committed, delivering the notice personally to the employee at the moment of dismissal or, alternatively, communicating it to the competent court, within five working days, in which case the employer must provide the employee's last registered address in order to allow the authority to notify the employee. However, since the reform of the Federal Labour Law in 2019, it is no longer strictly necessary to deliver the notice of termination; the lack of written notice will only generate a presumption that the dismissal was unjustified, with the employer being able to prove in court the causes for termination.

In case of occurrence of any of the causes mentioned in Article 51 of the Federal Labour Law, the employee may terminate the labour relationship within 30 days

following the date on which any of those causes occurs.

Severance Payment

Those employees who voluntarily terminate their employment relationship or who are terminated with justified grounds for dismissal are entitled only to a settlement payment (*finiquito*), comprising the proportional amounts accrued for the work rendered in favour of the employer (eg, salary up to the date of termination, vacations not taken, vacation bonus, proportional Christmas bonus, etc), without being entitled to any severance payment.

In all other cases, employees will be entitled to a severance payment consisting of the constitutional indemnity which is integrated with the amount of three months of integrated salary (ie, comprising payments made in cash for daily work, gratuities, bonuses, room and board, commissions, benefits in kind and any other amount or benefit given to employees for their work), as well as a seniority premium consisting of 12 days of salary for each year of service rendered, which is capped at twice the minimum wage currently valid at the termination date of the employment relationship.

It is recommended, in any case, to obtain external professional advice in order to determine whether any of the causes for termination set forth in the law have occurred, and to determine how they may be proven in an eventual labour proceeding initiated by the employee, as well as for the calculation of the amounts to be paid in their favour due to the termination and, finally, to determine the manner in which it is advisable to document the termination of the labour relationship.

7.3 Dismissal for (Serious) Cause

In Mexico, there are no special or different procedures for summary dismissals or dismissals for serious cause. All types of terminations are processed in terms of the provisions set out in 7.1 Grounds for Termination and 7.2 Notice Periods.

7.4 Termination Agreements

In terms of the Federal Labour Law, one of the grounds for termination provided by law (Article 53) is the

mutual consent of the parties; therefore, termination agreements signed by both employer and employee are permitted and a common practice.

Although there are no specific formalities or requirements with which these agreements must comply, taking an approach arising from a systematic interpretation of several articles of the Federal Labour Law, the common practice is that such agreements usually include mutual release of liability for both parties. In addition, such agreements must be executed in writing and ratified before local or federal conciliation and arbitration centres, as appropriate.

7.5 Protected Categories of Employee

In Mexico, there are no specific categories of employees who cannot be dismissed.

8. Disputes

8.1 Wrongful Dismissal

In the event that the employer does not prove the existence of any of the grounds for justified termination of the labour relationship, the employee will be entitled to demand before the competent labour authority, the reinstatement in their job (or, as the case may be, the payment of the corresponding severance), the payment of wages due for up to a maximum period of 12 months, plus the corresponding interest thereon, if applicable, the payment of seniority premium, vacations not enjoyed by the employee, vacation bonus, Christmas bonus and the constitutional indemnity.

8.2 Anti-Discrimination

In terms of the provisions of the Federal Labour Law, as well as other Mexican laws on discrimination, employers may not establish any conditions that may result in discrimination among employees based on ethnic or national origin, gender, age, disability, social status, health conditions, religion, immigration status, opinions, sexual preferences or marital status, or any other condition that violates human dignity. Therefore, neither employers nor their representatives may refuse to hire employees based on the above-mentioned grounds for discrimination.

In addition, other laws contain other types of obligations to prevent and eradicate discrimination in the workplace, for example, the Federal Law to Prevent and Eliminate Discrimination (*Ley Federal Para Prevenir y Eliminar La Discriminación*), which states that it is considered discriminatory to establish differences in remuneration, benefits or working conditions for equivalent jobs.

In case of violation of the above, the corresponding authority may impose a fine ranging from 250 to 5,000 times the Unit of Measurement and Update – ie, between approximately MXN28,285.00 and MXN565,700.00.

It should be noted that, to impose the corresponding sanctions, the authority must consider several issues, such as the seriousness of the discriminatory conduct or social practice; the concurrence of two or more causes or forms of discrimination; recidivism – ie, when the same person commits the same, a similar or a new violation of the right to non-discrimination, whether to the detriment of the same or a different aggrieved party; the effect produced by the discriminatory conduct or social practice, etc.

8.3 Digitalisation

Despite much technological advance in the workplace, no regulation in Mexico has yet facilitated the digitalisation of employment disputes: court disputes remain in-person proceedings. However, with the creation of the new labour courts, there is already the possibility to request that some hearings within the procedure be held online if both parties agree.

9. Dispute Resolution

9.1 Litigation

Mexico has had specialised labour courts since 2017, when a constitutional reform was published that ordered the creation of labour courts at the federal and state levels. This reform was complemented in 2019 by a reform to the Federal Labour Law that set forth the parameters for the creation of labour courts, and initially granted a maximum term of three years in local matters and four years in federal matters for their creation and entry into operation.

Prior to these reforms, labour disputes were tried before the federal or local conciliation and arbitration boards which, although they exercised judicial functions in labour matters, belonged structurally to the executive branch.

Regarding class actions in labour matters, in Mexico the concept of class actions is exclusive to civil matters to protect conflicts in matters of consumer relations of goods or services, public or private, and the environment. Notwithstanding the foregoing, the Federal Labour Law contemplates the existence of collective labour disputes, in which the legitimised entity is usually the union of employees holding collective bargaining agreements and/or the majority of the employees of a company or establishment.

9.2 Alternative Dispute Resolution

In Mexico, employees who wish to start a labour dispute must, before going to the labour courts, attend a conciliation procedure. The conciliation procedure will be carried out by federal or local conciliation centres.

If a conciliation agreement is executed, it will have the status of *res judicata* and in case of non-compliance it will have the quality of a title to start executive actions through the mechanisms for the enforcement of judgments provided for in the Federal Labour Law. If the parties do not reach an agreement, the conciliation centre will issue a certificate of non-conciliation in favour of the employee which enables them to file their claim before the competent court.

Additionally, since the USMCA was ratified by Mexico in 2019, the Rapid Response Labour Mechanism, designed to prioritise labour obligations and reduce interference in workers' union activities within specific sectors, has been highly active. To date, the United States has initiated 36 cases against Mexico, including five in 2025.

The Rapid Response Labour Mechanism allows, in case of non-compliance with certain labour obligations and/or denial of rights established in Chapter 23 of the USMCA, such as rights of freedom of association and collective bargaining within a specific company, for a USMCA party to initiate a dispute resolution procedure against another party in a specific list of

sectors. This mechanism applies only between Mexico and the USA, and Mexico and Canada. The dispute begins with a request to a USMCA party, followed by a series of interactions between the parties. If the issue is not resolved, it is brought before a labour panel. If non-compliance continues, a party may adopt measures such as increased tariffs, monetary sanctions, and even potential restrictions on imports from the company in question. Thus far, the majority of cases have been solved prior to the labour panel stage of proceedings.

9.3 Costs

Although Article 944 of the Federal Labour Law sets forth that “the expenses incurred in the enforcement of the award shall be borne by the party that fails to comply”, the Mexican federal courts have ruled that this only refers to the costs of enforcement itself and does not extend to the attorney’s fees incurred during the lawsuit.

NETHERLANDS

Law and Practice

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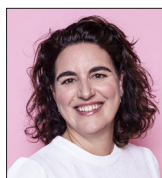
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1. Employment Terms

1.1 Employee Status

Dutch employment law protects the employee extensively. Therefore, no distinction is made between blue-collar and white-collar workers as all employees are protected under Dutch employment law.

If the terms blue- and white-collar workers are being used, they refer to the type of work employees do, with blue collar referring to jobs that require more manual labour and white collar referring to primarily office jobs. However, these terms do not imply a different employee status or different kind of protection for the employees. Employment laws apply to all employees and are mandatory, meaning that deviations are not permitted. Certain provisions may be deviated from if permitted by a collective labour agreement. Additionally, some rules are more flexible for employees who earn more than three times the statutory minimum wage, such as those relating to holiday pay and working hours. Furthermore, the rules regarding dismissal are less strict for temporary agency workers.

Whether an employment agreement is in place depends on the presence of the three elements: work, remuneration and authority. Parties may enter into an agreement and explicitly declare that the agreement is not an employment agreement. However, if the aforementioned three elements are present, Dutch courts and tax authorities may rule that there is an employ-

ment agreement in place and that Dutch employment law applies to the agreement between the parties. The qualification of the employment agreement is therefore not only dependent on what parties agree upon, but also on the factual circumstances of work that is performed. This is an ongoing discussion in the Netherlands and more information on this can be found under the [Netherlands Trends and Developments](#) chapter of this guide.

1.2 Employment Contracts

Establishment of the Employment Agreement

An employment agreement may be concluded either orally or in writing. However, according to Article 7:655 of the Dutch Civil Code the employer is legally required to provide the employee with written information about several essential terms of employment.

General Information

The written information provided by the employer must include at a minimum:

- names and addresses of both the employer and the employee;
- location(s) where the work will be performed – if there is no fixed workplace, the agreement must state that the employee may be required to work at various locations;
- job title; and
- clear description of the associated duties and responsibilities.

Duration and Termination

Regarding the duration and termination of the employment agreement, the written information provided by the employer must specify the following:

- starting date of employment – for fixed-term agreements, the duration of the agreement must be stated explicitly;
- if a probationary period applies, its duration and conditions must be clearly indicated; and
- the applicable notice periods or how these periods are calculated.

Dutch law limits the use of consecutive fixed-term agreements. If an employee enters into three successive fixed-term agreements (with no more than six months between each), or if the total duration of fixed-term agreements exceeds 36 months, the last agreement will automatically convert into a permanent (indefinite) employment agreement. These rules are not only applicable to consecutive agreements with the same employer, but also to agreements with different employers where there is reasonable continuity in the work performed. A collective labour agreement may deviate from these rules and establish shorter limits.

Leave Entitlements

The written information provided by the employer must specify the employee's entitlement to paid vacation and explain how these days are calculated. Any other types of paid leave and their calculation methods must also be included in the written information.

Remuneration and Compensation

Regarding the remuneration and compensation of the employee, the written information provided by the employer must contain the following:

- employee's remuneration, including gross salary, any allowances or variable components;
- method and frequency of payment;
- if applicable, any performance-related pay – in such cases, the expected volume of work per day or week and the required working time must be specified; and
- whether the employee participates in a pension scheme, along with any applicable conditions.

Working Hours and Schedule

The agreed number of working hours per day or week must be included in the employment agreement. If overtime is applicable, the conditions and compensation must be described. Where working hours are irregular or unpredictable, the agreement must clarify the minimum guaranteed hours, the pay for additional hours, and the days and times when the employee may be required to work.

Special Provisions

If the employment relationship is based on a temporary agency contract or an on-call agreement, this must be clearly stated in the employment agreement, together with the identity of the user undertaking (ie, the third party or host company where the employee performs the work). If a collective labour agreement applies, the employment agreement must make explicit reference to it.

Furthermore, any training and development opportunities provided by the employer should be included in the agreement. The agreement should also specify, where applicable:

- the employee's right to training provided by the employer; and
- to the extent that the employer is responsible, the identity of the social security institutions to which social security contributions are paid in connection with the employment relationship, as well as the social security protection provided by the employer.

1.3 Working Hours

Working hours and conditions are regulated under the Working Hours Act (*Arbeidstijdenwet*). The permitted working hours depend on the industry and the nature of the work. Typically, employees can work up to 12 hours per day and no more than 60 hours per week. Averaged over four weeks, the weekly maximum is 55 hours, and over sixteen weeks, it is 48 hours per week. The Working Hours Act contains separate rules for minors and pregnant women. Any working hours set out in an individual employment agreement that conflict with the Working Hours Act can be declared null and void.

There are exceptions and additional rules for certain sectors, such as healthcare and transport. These exceptions and additional rules can be found in the Working Hours Decree (*Arbeidstijdenbesluit*). Collective labour agreements may also provide for deviations from these regulations.

1.4 Compensation

Minimum Wage

Generally, wages are agreed upon freely between employers and employees. However, the Dutch Act on Minimum Wages and Minimum Holiday Allowances (*Wet minimumloon en minimumvakantiebijslag*) sets mandatory minimum wage and holiday allowance levels, which are updated annually. As of 1 July 2025, the gross statutory minimum hourly wage for employees aged 21 and over has increased to EUR14.40 per hour. If a collective labour agreement applies, it may also include binding salary scales.

Specific Regulations

The Standards for the Remuneration of Top Officials in the Public and Semi-Public Sector Act (*Wet normering topinkomens*) limits the income and severance payments of senior officials in public and semi-public sectors. Since 2015, their salary cannot exceed that of a government minister, known as the *Balkenendenorm*. This Act applies to institutions like healthcare institutions, housing associations and educational institutions. For 2025, the maximum gross salary, including holiday pay and bonuses, is set at EUR246,000.

In the financial sector, the Financial Supervision Act (*Wet financieel toezicht*) regulates bonuses and severance allowances. Although the Act is based on European regulations, in the Netherlands the bonus cap is lower than in other European jurisdictions. The provisions include:

- a cap on variable bonuses to a maximum of 20% of the gross fixed yearly salary – only in exceptional cases may exceptions be made and the European bonus cap of 100% applies;
- the rule that at least 50% of variable remuneration must be based on non-financial criteria;
- a cap on severance payments at one year's fixed salary; and
- a prohibition on granting guaranteed bonuses.

Bonuses

For sectors, bonuses are not a legal entitlement unless agreed in the employment agreement or a collective labour agreement. The rules below apply to the payment of bonuses.

- Employers must ensure bonuses are awarded fairly, avoiding favouritism or exclusion of certain groups. The General Equal Treatment Act forbids discrimination based on race, gender, religion, nationality, marital status or sexual orientation.
- Dutch case law includes the “acquired rights” principle: if bonuses are paid regularly and without reservation, employees may expect them to continue and therefore also rightfully claim a bonus. To avoid this, employers should explicitly state that bonuses are discretionary and do not create future claims.
- Employers must act responsibly when granting bonuses, ensuring transparency and avoiding arbitrary decisions. Bonuses given on a purely discretionary basis can create unfair situations, possibly leading to legal claims. Employers should be able to explain why some employees receive bonuses and others do not.
- Temporary agency workers are entitled to equal pay, including bonuses, matching that of the hiring company's employees.

13th Month

A 13th month is an extra gross monthly salary that some employers pay their employees, usually at the end of the year. It is a bonus on top of the regular salary and is often seen as a form of secondary employment condition. There is no legal obligation for the employer to provide the employee with a 13th month. However, pursuant to employment agreements, collective labour agreements, personnel handbooks or the “acquired rights principle”, employees may be entitled to a 13th month.

1.5 Other Employment Terms

Vacation

According to the Dutch Civil Code, employees are entitled to a statutory minimum of vacation days equal to four times their weekly agreed working hours. For instance, an employee working 40 hours (5 days) per week must receive at least 160 vacation hours (20 vacation days) annually. Any vacation days granted

beyond this minimum are considered “non-statutory” and may be included in the employment agreement or collective labour agreement but are not mandatory by law.

Statutory vacation days generally expire six months after the year they were earned, provided the employer has actively encouraged the employee to take the leave and informed them about the expiration date. If the employer fails to do so, these days will not expire. Non-statutory vacation days usually expire five years after the year they were accrued. The Dutch Supreme Court ruled that the employer’s obligation to inform the employee of the expiring vacation days also applies to non-statutory vacation days.

Vacation dates are typically chosen by the employee. If business needs prevent approval of the requested period, the employer must inform the employee in writing within two weeks of the request. Without timely notice, the employee’s chosen period applies.

In addition to vacation days, employees are entitled to receive a holiday allowance, generally 8% of their annual salary, as long as their salary does not exceed three times the minimum wage. However, in general all employees receive the holiday allowance over the salary they earned, even if that exceeds three times the minimum wage.

Employees who are ill during the year continue to accrue their full vacation entitlement.

Maternity and Birth Leave

Female employees are entitled to at least 16 weeks of full paid maternity leave. During this time, the Employee Insurance Agency (UWV) pays 100% of the employee’s daily wage to the employer, up to a maximum daily amount (currently EUR297.82 gross).

Partners are granted once the number of working hours per week of paid birth leave at 100% of the employee’s daily wage. Based on full-time employment, this is five days of paid birth leave. These days may be taken immediately after the child’s birth but can also be spread over the first four weeks after the child’s birth.

Parental Leave

Employees caring for a child under eight years old have the right to parental leave, up to 26 times their weekly working hours. This leave is unpaid, and no vacation entitlement is accrued during this period. The right to parental leave ends when the child turns eight.

Additionally, employees may take up to nine weeks of partially paid parental leave within the first year after their child’s birth, receiving 70% of their salary, up to a maximum daily amount (currently EUR297.82 gross). The remaining 17 weeks of parental leave remain unpaid. This applies equally to both parents, though partners must take their five days of birth leave separately.

Sickness Leave

Employers must continue to pay employees who are sick for up to two years. During this period, the employer pays 70% of the employee’s salary. In the first year, this amount cannot be lower than the minimum wage; this requirement does not apply in the second year. The 70% calculation excludes any salary above the maximum daily wage. Many employees benefit from more favourable terms in contracts or collective labour agreements.

Bereavement Leave

On 12 July 2024, a bill that introduces bereavement leave was submitted. If this bill is passed, employees are entitled to five days of paid leave in family situations involving minor children where one of the parents or a minor child has died. The bill has not yet been considered by the House of Representatives. It is therefore unclear whether the bill will be passed and, if so, when the bill will enter into force.

Non-Disclosure

Employees are expected to keep confidential information private and protect the employer’s reputation, even if no explicit agreement exists. Employment agreements may include a confidentiality clause to safeguard sensitive information about the company, its clients or market position.

There are no specific legal formalities for such clauses, but they must clearly specify what information is confidential. It is advisable to include a penalty clause

for violations, which must be written, capped relative to salary, and narrowly defined. Confidentiality clauses cannot be used to block lawful whistle-blowing.

Employees are not permitted to make unfair public accusations against their (former) employer. Should an employee's comments cause damage, the employer can claim compensation.

Employee Liability

Generally, employees are not liable for damages caused while performing their duties, unless the harm was caused intentionally or through deliberate recklessness.

Furthermore, according to the Dutch Civil Code, employers are responsible for their employees' actions within the scope of employment; this means that employers generally bear liability for damages caused by their employees during work.

2. Restrictive Covenants

2.1 Non-Competes

Non-compete clauses are only valid if agreed upon; they must be in writing and specify the restricted activities, geographic area and duration. The employee must be at least 18 years old when signing the agreement.

The restrictions should be limited to what is reasonably necessary to protect the employer's legitimate business interests. Typically, a duration of one year is considered appropriate. The scope of the restrictions depends on the industry and the employee's role. Non-compete clauses cannot be used to indefinitely bind employees to the company.

Non-compete clauses are generally prohibited in fixed-term employment agreements unless the employer can justify a significant business interest for including such a clause, which must be explicitly stated in the contract. This significant business interest must exist both at the moment of signing the agreement and the moment the employer enforces the non-compete clause.

Employers may enforce non-compete clauses in court and claim damages if breached. Usually, a penalty clause is included, requiring the employee to pay a predetermined amount if they violate the agreement. Employers may also take legal action against a new employer who knowingly hires someone breaching a non-compete clause.

Courts can reduce or refuse to enforce non-compete clauses. The clause may become partially or fully invalid if the employee's job duties change significantly and unforeseeably at the moment of signing the non-compete. If the clause restricts the employee's ability to work elsewhere, courts may order the employer to compensate the employee during that period. Employers can also choose to release the employee from the clause, ending their obligation to pay compensation. However, this is uncommon in the Netherlands.

A bill introduced on 4 March 2024 by the government seeks to tighten rules around non-compete clauses. If passed, it will limit the maximum duration to one year, require a clear and justified geographic scope, and oblige employers to prove a "compelling business interest" for the clause, even in permanent contracts. Employers would also be required to pay compensation equal to 50% of the employee's last monthly salary for each month during which the employer enforces the restriction against the employee after the termination date of the employment agreement. These rules would also cover non-solicitation clauses. The bill has not yet been considered by the House of Representatives. It is therefore unclear if the bill will be passed and, if so, when the bill will enter into force.

2.2 Non-Solicits

Employment agreements can include a non-solicitation clause, which prevents the employee from approaching the employer's clients or colleagues both during and after their employment.

A non-solicitation clause has the same requirements as a non-compete, meaning the employee must be at least 18 years old when signing the non-solicitation clause and, where an employment agreement is for a definite period of time, the non-solicitation clause must include a significant business interest for includ-

ing such a clause. Furthermore, the non-solicitation clause may not be too restrictive.

The employer has the right to enforce this clause in court and claim damages if it is breached. Often, the contract includes a penalty clause that obliges the employee to pay a specified amount to the employer if the non-solicitation clause is violated. Nonetheless, courts may choose to reduce or refuse enforcement of the clause.

3. Data Privacy

3.1 Data Privacy Law and Employment

The General Data Protection Regulation (GDPR) applies to the processing of personal data by data controllers or processors operating within the European Union. In the Netherlands, there are additional national rules derived from the GDPR Implementation Act (*Uitvoeringswet AVG*, or *UAVG*).

The GDPR allows member states to establish specific privacy rules concerning employment matters. However, Dutch legislators have not yet made use of this option.

The responsible handling of personal data is a core requirement of the GDPR. The data controller must be able to demonstrate compliance with the GDPR, for example through policy documents, agreements and other evidence. Other key principles that are set out in the GDPR and that apply to the processing of personal data are:

- lawfulness;
- fairness;
- transparency;
- purpose limitation;
- data minimisation;
- accuracy;
- storage limitation; and
- security.

Compliance with the GDPR and UAVG is overseen by the Dutch Data Protection Authority (*Autoriteit Persoonsgegevens*), which can impose administrative measures and fines for violations. Maximum fines can

reach up to EUR20 million or 4% of the global annual turnover, whichever is higher.

Compliance with the GDPR and UAVG depends on the specific circumstances and requires appropriate documentation, procedures and organisational measures. It is an ongoing process that must be assessed on a case-by-case basis.

4. Foreign Workers

4.1 Limitations on Foreign Workers

Citizens of the European Economic Area (EEA) and Switzerland do not require a work authorisation. For those from outside the EEA and Switzerland, a work permit is usually needed for stays under three months, while a combined residence and work permit – called a single permit – is required for stays longer than three months. Employers must apply for the work permit through the Employee Insurance Agency (UWV) in the Netherlands, meeting conditions such as compliance with the Dutch Working Conditions Act (*Arbeidsomstandighedenwet*) and ensuring the employee holds a valid residence permit. If the employee plans to stay in the Netherlands for more than three months without a residence permit, the employer must apply for a single permit to the Immigration and Naturalisation Service (IND).

There are streamlined procedures for specific groups, including highly skilled or highly educated foreign workers (typically assessed by salary or educational qualifications), students, artists, and employees transferred within a company to the Netherlands.

All application forms are available only in Dutch. Before applying, all documents must be translated into Dutch, English, German or French. The IND has a maximum of three months to decide on a single permit application.

If an employee who is an EEA citizen is going to work temporarily (less than 24 months) in another EEA country, this employee must be in possession of an A1 certificate. An A1 certificate is a statement that the employee is insured in the country where their work is normally performed. The lending employer must apply

for the A1 certificate from the competent authority in the country of origin. If the employee performs work abroad without an A1 certificate, the Dutch Labour Inspectorate (*Arbeidsinspectie*) may impose a fine on the client, the lending employer or the employee.

4.2 Registration Requirements for Foreign Workers

When a foreign employee starts working in the Netherlands, the foreign company is generally required to register with the Dutch tax authorities as a withholding agent for wage taxes and, if applicable, social security contributions. This also includes the employer's contribution to healthcare insurance. However, this registration is not necessary if none of the employees are subject to Dutch wage tax or social security legislation.

Before the employee starts performing work, the employer must fulfil several administrative obligations:

- set up a payroll administration that deducts wage tax and, if applicable, social security contributions;
- register the employee in the payroll administration;
- record the employee's citizen service number (BSN);
- verify the employee's identity using a valid passport or ID card and keep a copy on file;
- obtain and file a completed and signed wage tax declaration from the employee;
- determine whether the employee is a tax resident of the Netherlands or another country;
- if necessary, check whether a residence or work permit is required and keep a copy; if the permit is renewed, add the new copy to the file; and
- if applicable, jointly apply with the employee for the 30% ruling at the Foreign Office of the Dutch Tax Authorities. If the application is submitted within four months of the start date, the ruling will apply retroactively from the first day of employment.

5. New Work

5.1 Mobile Work

In the Netherlands, working from home is not a statutory right. However, according to the Flexible Work Act, employees may submit a written request to (par-

tially) work from home – for example, due to health-related reasons. Employers are obliged to give serious consideration to such a request and may only reject it on valid grounds. Acceptable reasons for rejection include:

- disruption of work processes caused by remote work;
- the nature of the job requires physical presence at the workplace; and/or
- the home workspace does not meet safety or suitability standards.

There are conditions attached to an employee's right to submit such a request, namely:

- the request must be submitted in writing;
- the company must have at least ten employees;
- the employee must have been employed for at least six months; and
- the request must be submitted no later than two months before the intended start date of working from home.

Employers have a duty of care to ensure a safe and responsible home working environment. This includes reasonably providing the necessary facilities, such as ergonomic chairs, computer monitors, or other work-related equipment. In consultation with the employee, suitable arrangements should be made to prevent physical complaints. The home office should be ergonomically designed with attention to safety, comfort, health and functionality. Employers may offer or reimburse ergonomic tools – such as an ergonomic mouse or proper lighting – tax-free, up to a certain amount.

Providing information is also an essential part of the employer's duty. Employees must receive education on how to work safely and healthily from home. This includes guidance on proper posture, setting up their workspace, and awareness of risks such as physical complaints or work-related stress. Employers should also inform staff about rules regarding screen use.

Lastly, working from home must be incorporated into the company's risk inventory and evaluation (RI&E), which forms the foundation of its occupational health and safety policy. Special attention must be given to

specific risks associated with remote work, such as increased mental pressure from combining work and private responsibilities. It is advisable to establish targeted policies to address psychosocial workload.

5.2 Sabbaticals

Employees do not have a legal right to a sabbatical. This means that the right to a sabbatical must result from the arrangements made in the employment agreement, collective labour agreement and personnel handbooks.

Employees may choose to take unpaid leave – either full-time or part-time – after consulting with their employer. There are no statutory rules regarding the duration of a sabbatical. However, as unpaid leave is not a legal entitlement, employers are permitted to deny such a request.

Since there is no legal framework for sabbaticals, employers and employees are free to make their own arrangements. It is advisable to record these in writing. Such agreements may include the following aspects:

- conditions that the employee must meet before they may be entitled to a leave;
- the duration of the leave;
- the position the employee will return to afterwards;
- the employment conditions that will apply during the leave, such as the use of a company car, laptop or phone; and
- the arrangements in case of illness during the sabbatical – generally, there is no entitlement to continued salary payments unless explicitly agreed otherwise.

Employers may choose to formalise these agreements in a sabbatical policy, though this is not legally required.

5.3 Other New Manifestations

There have been no new developments or implementations in “new work”.

6. Collective Relations

6.1 Unions

Trade unions play a vital role in representing the interests of individual employees and employee groups. Their primary task is to advocate for the collective interests of workers within specific sectors or industries. Trade unions negotiate with large employers, employers’ organisations or other trade unions regarding employment terms, resulting in the conclusion of collective labour agreements. These agreements can apply to a single company or to an entire industry.

In addition, trade unions provide support in drafting redundancy schemes and offer advice on forced redundancies within organisations. Moreover, through collective labour agreements, they can deviate from certain statutory employment law provisions.

6.2 Employee Representative Bodies Works Council

Companies with 50 or more employees are required to establish a works council composed of employee-elected members. Companies with fewer than 50 employees may also be required to establish a works council in certain situations, for example when the requirement is stipulated in the collective labour agreement.

Temporary agency workers who have been working for the company for at least 24 months shall be counted as part of the company’s workforce. If this obligation is not met, any interested party, such as an employee or trade union, may initiate legal proceedings to enforce the establishment of a works council. In general, employers await requests from the employees before establishing a works council. If such request is not made, it is not necessary to establish a works council, even if the employer has more than 50 employees. There is no fine for not having a works council, provided that neither the employees nor any interested party has requested it.

The works council has several important rights and duties, including:

- the right to provide advice on significant financial, economic and organisational decisions made by the company; and
- the right to give consent to proposals concerning the establishment, modification or revocation of regulations related to the company's social policies.

If a company has multiple works councils, it may choose to establish either a central works council or a group works council. This choice should contribute to the proper implementation of the Works Councils Act within these companies.

Employee Representative Body

When a company has between 10 and 50 employees and does not have a works council, it may be required to establish an employee representative body (*personeelsvertegenwoordiging*). This body must consist of at least three members who are directly elected through a secret ballot.

6.3 Collective Bargaining Agreements

The Collective Labour Agreements Act (*Wet CAO*) defines the concept of a collective labour agreement and specifies which parties are authorised to enter into such agreements. A collective labour agreement is a written arrangement between one or more trade unions and one or more employers' organisations. These agreements set out various terms and conditions of employment, including:

- wages;
- working hours;
- pension schemes;
- holiday entitlements; and
- social provisions.

These agreements are binding for both the employer and employee covered by the collective labour agreement.

There are two types of collective labour agreements:

- for agreements with a minimum character, deviations are only permitted if they are more favourable to the employee than the provisions in a company scheme or individual employment agreement – deviations that are less favourable to the employee are null and void; and
- for agreements with a standard character, any deviations from the terms are invalid and therefore null and void.

If an employer is a member of an employers' organisation that has concluded a collective labour agreement, the employer is obliged to apply the terms of that agreement to their employees.

Additionally, the Minister of Social Affairs and Employment may declare a collective labour agreement generally binding upon request of the parties involved. This means the agreement applies to the entire sector, regardless of whether an employer is a member of the employers' organisation that concluded the agreement. If the employer's activities fall within the scope of the collective labour agreement, they must implement its terms within their company.

7. Termination

7.1 Grounds for Termination

Fixed-Term Agreements

A fixed-term employment agreement or an agreement for a specific project ends automatically upon the expiration of the agreed period or completion of the project. For agreements lasting six months or longer, the employer is required to inform the employee at least one month in advance in writing whether the fixed-term agreement will be extended and, if so, under what terms.

Termination of Open-Ended Contracts

An employment agreement for an indefinite period can be terminated in the following ways:

- termination by the employer with permission from the Dutch Employee Insurance Agency (UWV);

- employee's consent after the employer gives notice – the above-mentioned permission of the UWV is not required;
- termination by court decision;
- termination by mutual consent;
- immediate dismissal for urgent cause; or
- resignation by the employee.

Dismissal via the UWV

In cases of dismissal for economic reasons or long-term incapacity to work, the employer must request permission from the UWV to give notice. The UWV will only grant this permission if there is a reasonable ground for dismissal and redeployment (even after training) is not feasible or reasonable within a reasonable period. The procedure with the UWV usually takes around six to eight weeks. After receiving permission, the employer may give notice, deducting the duration of the UWV procedure from the notice period, provided at least one month of notice remains.

Dismissal via the Court

The subdistrict court may dissolve the employment agreement if a reasonable ground for dismissal exists and redeployment is not possible or reasonable. This may apply in the following cases:

- frequent and disruptive sickness absence;
- incompetence or underperformance (not related to illness);
- culpable actions or omissions;
- serious conscientious objections preventing work;
- severely damaged working relationships;
- a combination of multiple dismissal grounds (cumulative dismissal); and
- exceptional other circumstances.

In the case of cumulative dismissal, the court may award an additional severance payment of up to 50% of the statutory transition payment, in addition to the statutory transition payment itself.

After submitting the request, the employee may submit a statement of defence. A hearing will be scheduled, after which the court decides whether to terminate the contract, taking into account the applicable notice period. The court's decision can be appealed.

Collective Dismissal

If an employer intends to dismiss 20 or more employees within a three-month period in a single geographical working area of the UWV, this qualifies as a collective dismissal under the Dutch Collective Redundancy (Notification) Act (*Wet Melding Collectief Ontslag*, or WMCO). In such cases, the employer is legally required to:

- notify the UWV and the relevant trade unions in writing of the intended dismissals; and
- enter into consultations with the relevant trade unions (ie, representative employee organisations).

When determining whether the threshold of 20 employees has been reached, the employer must also include terminations agreed upon by mutual consent, as well as cases where employees resign as a result of substantial deteriorations in their working conditions imposed or proposed by the employer.

Failure to comply with the notification and consultation obligations under the WMCO may have serious consequences. In such cases, an employee may claim to nullify the termination of their employment agreement, effectively rendering the dismissal legally invalid.

7.2 Notice Periods

Statutory Notice Periods for Employers and Employees

Under Dutch law, the following statutory notice periods apply to employers when terminating an employment agreement:

- fewer than five years of service – one month;
- five years or more, but fewer than ten years of service – two months;
- ten years or more, but fewer than 15 years of service – three months;
- 15 years of service or more – four months; or
- when the employee reaches the state retirement age – one month.

For employees, a standard notice period of one month applies. If a longer notice period is agreed upon, it must be laid down in writing. In such cases, the

employer is required to observe a notice period that is twice as long as the employee's.

Deviation from the statutory notice periods is possible through a collective labour agreement, provided it stays within the legal limits. If the deviation exceeds these limits, the statutory notice period remains applicable. Unless otherwise agreed, the notice period begins on the first day of the month following the month in which notice is given.

Transition Payment

From the first day of employment, including during any probationary period, employees are entitled to a statutory transition payment if their employment agreement is terminated on the initiative of the employer and for reasons other than urgent ones. This payment amounts to one third of the gross monthly salary for each calendar year of service.

The transition payment is currently capped at EUR98,000 gross. If the employee's annual salary exceeds this amount, the cap is set at one annual salary. Generally, the transition payment is not owed when the employee terminates the agreement, unless the termination results from seriously culpable behaviour on the part of the employer. In such cases, the employee remains entitled to the payment.

Employers may apply for compensation from the government for the transition payment when termination occurs due to long-term incapacity for work (after two years of illness).

Where the employer ceases business operations due to illness or retirement, compensation may also be granted. This arrangement is only available to small businesses (fewer than 25 employees) and applies solely to transition payments owed in the six months preceding UWV approval or termination of the employment agreement. A number of strictly defined conditions must be met for eligibility.

When calculating the duration of employment, successive employment agreements between the same parties (or their legal successors), with breaks of no more than six months between them, are counted as continuous service.

7.3 Dismissal for (Serious) Cause

An employer may dismiss an employee with immediate effect if the employee has engaged in such misconduct that the employer cannot reasonably be expected to continue the employment relationship. There must be an urgent reason, in which case the employment agreement can be terminated with immediate effect. This urgent reason must be communicated to the employee without delay, and the dismissal must be conducted immediately and without notice.

In the case of instant dismissal, the employer is not required to observe a notice period. Since the dismissal is based on culpable conduct by the employee, the employer is entitled to compensation equal to the salary that would have been paid during the regular notice period.

If the dismissal results from serious culpable behaviour (which is often, but not necessarily, the case in summary dismissal), the employee will in principle not be entitled to the statutory transition payment. In addition, instant dismissal also means that the employee is likely not to be entitled to unemployment benefits.

7.4 Termination Agreements

In Dutch employment law, a settlement agreement (also referred to as a termination agreement) is used when the employment agreement is ended by mutual consent. In this agreement, the employer and employee jointly set out the conditions under which the employment relationship will be terminated. Although Dutch law does not require a settlement agreement, it is considered best practice. This is partly because an employee who concludes a legally valid settlement agreement generally retains the right to unemployment benefits from the Unemployment Act, as long as the settlement agreement provides that the termination is on the initiative of the employer, the employee cannot be blamed for the reason for termination and no prohibition to give notice applies.

A settlement agreement typically includes the following elements:

- the personal details of both employer and employee;
- the employee's current position and salary;

- the reason for termination of employment – mostly a neutral ground is included, such as a difference of opinion or reorganisation;
- the date on which the employment agreement will end;
- any severance payment (which may also be zero, in principle is at least equal to the transition allowance);
- whether the employee will be exempt from work until the termination date;
- arrangements regarding payment of outstanding holiday entitlement (possibly deviating from statutory provisions);
- whether the employee remains bound by the post-contractual obligations, such as a non-compete clause or a relations clause;
- the employee's statutory right to revoke the agreement within 14 days after signing (if not explicitly included, a reflection period of 21 days applies by default); and
- a full and final discharge clause, meaning that, once all terms are fulfilled, neither party has any further claims against the other.

7.5 Protected Categories of Employee Restrictions on Termination by Employers

An employer is prohibited from giving notice of termination under the following circumstances:

- during an employee's pregnancy or maternity leave, and up to six weeks after the end of such leave;
- while the employee is a member of a participation body, such as a works council;
- during the period of prospective membership of a participation body (eg, candidates) and up to two years after the end of such membership;
- during the first two years of illness, unless the employee deliberately obstructs their recovery;
- during compulsory military service;
- while the employee is applying for or taking leave, such as parental leave, adoption leave, short-term or long-term care leave;
- because the employee is a member of a trade union;
- due to leave taken for political activities;
- because of the employee's refusal to work on Sundays; or

- due to the transfer of an undertaking.

These restrictions apply both in procedures before the Employee Insurance Agency (UWV) and the sub-district court. The “during” prohibitions do not apply when the employment agreement is terminated by mutual consent during the probation period, due to an urgent cause, upon reaching retirement age, or in certain limited cases of dismissal for economic reasons. There are no exceptions to the “because of” prohibitions.

Specific Exceptions

The sub-district court may also dissolve the employment agreement if:

- the request for termination of the employment agreement is unrelated to the circumstance covered by the prohibition; or
- there are compelling reasons that justify the termination in the employee's interest, for example, health reasons.

These exceptions apply only to the “during” prohibitions, such as pregnancy or membership in a representative body. They do not apply to dismissals for economic reasons, unless this results in the complete cessation of the company's activities.

8. Disputes

8.1 Wrongful Dismissal

A dismissal may be wrongful when:

- there is no reasonable ground for the dismissal;
- the employer has not followed the right procedure, such as dismissal without permission of the sub-district court or the Employees Insurance Agency (UWV);
- the notice period has not been taken into account; and
- an instant dismissal is made without urgent reason.

In the event that an employee has been wrongfully dismissed, the employee has two options to seek redress:

- file a request with the sub-district court to declare the termination of the employment agreement null and void, as a result of which the employment agreement continues; or
- request a fair compensation from the sub-district court.

The wrongfully dismissed employee must submit the request within two months after the termination date of the employment agreement. If the wrongful dismissal is related to a breach of the employer's reassignment obligation, the limitation period begins when the employee becomes aware – or reasonably should have become aware – of the breach. However, this period may not exceed eight months from the termination date.

There is no fixed formula for calculating fair compensation. The amount is determined by the sub-district court based on the specific circumstances of the case. The Supreme Court has identified several factors that may be taken into account, including:

- the potential earnings the employee would have received had the employment relationship continued;
- whether the employee has found alternative employment or is expected to do so, including the anticipated income from such employment; and
- the degree of fault attributable to the employer.

8.2 Anti-Discrimination

Under Dutch law, discrimination on any ground is prohibited. The Dutch Equal Treatment Act (*Algemene wet gelijke behandeling*) explicitly prohibits discrimination on the following grounds:

- religion;
- belief;
- political opinion;
- race;
- sex;
- nationality;
- sexual orientation; and
- marital status.

In addition, specific employment legislation prohibits discrimination on other grounds, including:

- age;
- disability or chronic illness;
- the nature of the employment agreement (temporary or permanent); and
- working hours (full-time or part-time).

Direct discrimination on any of these grounds is, in principle, not permitted, unless expressly allowed by law in specific situations.

The prohibition also extends to indirect discrimination, which occurs when an apparently neutral rule or practice leads, in practice, to unequal treatment based on one of the protected grounds. Indirect discrimination – as well as direct discrimination based on age, contract type or working hours – may be justified, but only if the measure is objectively necessary to achieve a legitimate aim and the means are proportionate to that aim.

Any agreement or arrangement between employer and employee that violates anti-discrimination laws may be declared null and void or voidable. In addition, the employee may hold the employer liable for damages resulting from discriminatory conduct or omissions by the employer.

8.3 Digitalisation

At present, legal proceedings in the Netherlands are generally not conducted digitally.

9. Dispute Resolution

9.1 Litigation

Employment Forums

In the Netherlands, employment disputes are primarily handled by the sub-district court judge. Although there is no separate employment court, sub-district court judges have substantial experience with employment matters.

In addition, there is a specialised judicial body for employee participation issues: the Enterprise Chamber of the Amsterdam Court of Appeal. This chamber handles cases under the Dutch Works Councils Act (*Wet op de ondernemingsraden*), including disputes over advisory and consent rights of works councils.

For dismissals based on economic grounds or long-term incapacity for work, employers must obtain permission from the Employee Insurance Agency (UWV). This is an administrative procedure that runs parallel to the judicial route via the sub-district court.

Class Action Claims

Pursuant to the Dutch Civil Code, interest groups or representative organisations can initiate proceedings on behalf of a group of affected individuals to obtain a declaratory judgment.

It is also possible to claim monetary damages through collective action. This is particularly relevant in cases of mass harm, such as large-scale violations of labour rights.

Legal Representation

Rules regarding legal representation vary depending on the court.

- Before the sub-district court legal representation by a lawyer is not mandatory. Parties may represent themselves, although legal assistance is generally advisable.
- In appeal and cassation proceedings (before the Court of Appeal or the Supreme Court), legal representation by a lawyer is required. In cassation cases, representation must be provided by a lawyer admitted to practise before the Supreme Court.
- In proceedings before the Enterprise Chamber, legal representation by a lawyer is standard due to the complex nature of such cases.
- At the UWV, the procedure is administrative rather than judicial. Legal representation is not required but may be beneficial given the need for clear legal and factual argumentation.

9.2 Alternative Dispute Resolution

Arbitration is a possible method for resolving employment disputes and pre-dispute arbitration agreements are enforceable and valid. However, arbitration is not often used. An important requirement for arbitration is that both parties need to consent to submit the matter to arbitral court. If arbitration is requested by only one party, the court will need to determine whether the other party is willing to engage in the arbitration process. If the other party is not willing to engage in the arbitration process, the requesting party will need to initiate regular court proceedings.

9.3 Costs

In principle, each party must bear its own legal costs during proceedings, regardless of the outcome of the case. However, the court has the authority to deviate from this principle and may order the losing party to compensate the opposing party for court fees and attorney's fees. It is important to note that the reimbursed attorney's fees are generally lower than the actual legal costs incurred during the proceedings, as the compensable costs are usually calculated based on fixed rates. Only in highly exceptional cases may a court order a party to pay the actual legal costs incurred by the opposing party. Such an order may be considered if a party brings a manifestly hopeless claim and it can be established that there has been an abuse of process. However, this must be specifically requested and substantiated by the opposing party. In practice, courts are very reluctant to grant such claims for reimbursement of the actual legal costs.

Trends and Developments

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Rutgers & Posch is committed to making a difference by delivering genuine value to clients, employees and society. Combining the strategic insight and expertise of “Big Law” with the agility and personal touch of a boutique, the firm offers clients access to experienced, internationally recognised lawyers and compact, responsive teams. Rutgers & Posch provides clear, straightforward billing and fee structures, and deep expertise in employment and pension law,

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Introduction

Dutch employment law is always changing. This chapter of the guide highlights the main trends and developments for the coming period that business leaders should know about.

A key topic is pay transparency. New European rules will soon require Dutch employers to be more open about how pay is set and to report on pay differences between men and women. This means companies will need to review their pay structures and be ready for more questions from employees.

Another major change is the reform of the Dutch pension system. The new law shifts from guaranteed pensions to a system where each employee builds up their own pension capital. This transition is complex and requires careful planning from employers. Since the deadline for the transition is 1 January 2028, time is running out and employers need to take action as soon as possible.

The position of self-employed workers has been under discussion for decades, but in the near future it seems likely there will be legislation on this topic. The government is working on new laws to clarify when someone is truly self-employed or should be treated as an employee. This is important for companies that work with freelancers or contractors.

These changes are explained below in clear terms, offering practical advice for businesses.

Pay Transparency

On 7 June 2023, the European Pay Transparency Directive (2023/970; the “Directive”) came into effect. Member states have been given three years to implement the Directive into national law. The Directive introduces four obligations on (large) employers.

Obligations for employers

Employers are required to implement an objective, gender-neutral pay structure. This pay structure must ensure equal pay for equal work or work of equal value. The pay structure must encompass all criteria relevant to the position in question, including, at a minimum, skills, effort, responsibilities and working conditions. It is important that relevant soft skills are not undervalued in this assessment.

Information rights for employees

Furthermore, the Directive introduces information rights for both job applicants and employees. Applicants must be informed, prior to salary negotiations, of the initial pay or the pay range associated with the position for which they are applying. Employers are prohibited from inquiring about an applicant’s salary history. Employees must be granted access to the criteria used for determining pay and pay levels, and employees working for employers with more than 50 employees must also be given access to the criteria for pay progression. Additionally, employees have the right to request information from their employer regarding their own pay level in comparison to the average pay level within their job category, broken down by gender. Employers are required to actively

inform employees of these rights at least once per year. Employers may no longer impose confidentiality regarding individual pay levels on employees.

Reporting obligations

Large employers (those with at least 100 employees) are subject to a reporting obligation. Employers must report on the gender pay gap within their undertaking, covering both fixed and variable pay components. After consultation with the works council, this report must be submitted to a monitoring body to be designated. The monitoring body will publish the data on a national public website. The specific details of this process will be further elaborated upon in secondary legislation. If the report reveals a pay difference that the employer cannot objectively justify, the employer must remedy this, in close co-operation with the works council, within a reasonable period. If the difference exceeds 5% within a job category and the situation is not rectified within six months, the employer must conduct a joint pay assessment. The employer must obtain the works council's approval for the measures taken to address pay differences, whether below or above 5%. Employers with more than 100 employees must report every three years, with the first report due by 7 June 2030 at the latest. Employers with more than 250 employees must report annually, with the first report due by 7 June 2027 at the latest.

Role of the works council

The works council plays a significant role in the implementation of the Directive. The works council is granted the right to approve the pay structure, measures taken to address unjustified pay differences, and the pay assessment. Furthermore, the works council must be consulted prior to the submission of the pay report and is granted additional information rights. Where a collective bargaining agreement applies, trade unions may assume the role of the works council, provided the matter is comprehensively regulated in the collective bargaining agreement.

Other relevant elements

The Directive entails a further shift in the burden of proof. If an employer has not complied with the pay transparency obligations of the Directive, a presumption of pay discrimination applies. The employer must then demonstrate that no pay discrimination

has occurred. This presumption does not apply if the employer can show that non-compliance with the Directive was manifestly unintentional and of a minor nature.

The Directive introduces a system of administrative supervision and enforcement. The Netherlands Labour Inspectorate will oversee compliance with the new pay transparency obligations. In the event of a breach, the Inspectorate may enforce compliance through a warning, an order subject to a penalty, or a fine.

Outlook

In April 2025, the Dutch government published the draft bill for the implementation of the Directive on pay transparency between men and women for public consultation. The draft bill provides for so-called pure implementation, meaning that the government has chosen not to provide for broader national measures than those required by the Directive. The implementing legislation must still be adopted by parliament and must enter into force by 7 June 2026 at the latest.

From Promise to Personal Pension Pot: the Dutch Pension System in Transition

On 1 July 2023, the Netherlands enacted the Future of Pensions Act (*Wet toekomst pensioenen*, Wtp), marking the beginning of a fundamental reform of the Dutch occupational pension system. The Wtp shifts the focus from a promise of fixed pension benefits to a system in which each participant builds up a more personal pension capital. While the legal framework is now in place, the implementation trajectory is complex and fraught with practical and legal challenges. Since all transitions must be completed by 1 January 2028, time is running out and employers need to take action as soon as possible.

From defined benefit to defined contribution

Under the old system, participants usually accrued pension entitlements based on a defined benefit promise. Pension funds bore investment and longevity risks and were required to maintain significant buffers to safeguard nominal pension promises. By contrast, the Wtp introduces a flat rate defined contribution-based system. Each participant accrues a personal pension capital, and the resulting pension outcome

depends on uncertain variables such as investment returns, interest rates and life expectancy.

This means pension outcomes are less predictable than before. However, the Wtp legislator considers this acceptable – even beneficial – because the available contributions are now used more efficiently. There is no longer a need to hold buffers to back a guaranteed nominal pension, and there are fewer unintended transfers of solidarity. These changes are designed to enable a better pension result in purchasing power, though without guarantees.

Transition mechanics: legal architecture and involvement of social partners

Employers and employees, typically represented by trade unions or works councils, are responsible for deciding whether and how to transition to the new system. They draft a transition plan, setting out their choices on conversion (*invaren*), the new scheme design, and possible compensation. The pension fund must then assess this plan and adopt an implementation plan detailing how it will execute the transition in practice.

Conversion of existing pension rights constitutes a legal interference with property rights under the European Convention on Human Rights (ECHR) and the EU Charter. However, the interference may be lawful if it serves a legitimate aim, is proportionate, and is prescribed by law. The Wtp satisfies these requirements in principle, but proportionality will be closely scrutinised, particularly where the conversion leads to materially different rights for certain groups, such as near-retirees.

Compensation and transitional relief

A key issue in the transition is how to compensate participants who may be disadvantaged by the shift from the current system of uniform contributions in a defined benefit scheme to a flat contribution rate in a defined contribution scheme. In a system with uniform contributions, all participants pay the same percentage of their pensionable salary and receive the same pension accrual, regardless of age. This implicit form of solidarity benefits older workers at the expense of younger ones. The Wtp abolishes this model in favour

of age-independent flat-rate contributions, thereby eliminating unintended intergenerational transfers.

The group most affected by this shift consists of middle-aged workers (typically those around age 45 at the time of transition), who no longer benefit from the redistributive effect of the previous system and may also be disadvantaged if their current plan included age-related (progressive) contribution rates. The Wtp offers several ways to mitigate such effects:

- **Transitional use of progressive contribution rates** – If an existing pension scheme applied an age-related (progressive) contribution scale before 1 July 2023, it may, under certain conditions, continue this scale for existing participants after the transition. This form of transitional relief is, however, only available for pension schemes administered by pension insurers (not pension funds).
- **Compensation in the form of extra pension accrual** – Employers may grant temporary extra pension accruals to affected age cohorts. This compensation must also be granted to new employees within the same age cohort to prevent labour market lock-in. The amount, form and duration of the compensation are subject to fiscal limits and equal treatment rules. The scope and duration of such compensation are subject to fiscal constraints. The maximum flat-rate contribution permitted under Dutch tax law is 30% of pensionable salary. During the compensation period, this ceiling may be temporarily increased by an additional 3 percentage points, allowing a total contribution of up to 33%. The compensation period may not extend beyond 1 January 2037.
- **Compensation outside the pension scheme** – Employers may also opt to offer financial compensation through other employment benefits, such as a temporary salary supplement. This type of compensation is more flexible and does not need to be offered to new employees.

Political developments and legal controversies

A recent political development briefly stirred unrest within the Dutch pensions sector. In early 2025, members of parliament proposed a controversial amendment that would have given participants – including pensioners and deferred members – a veto right

against the conversion of accrued entitlements, either through a referendum or by individual objection. The proposal faced strong criticism from the Council of State and key stakeholders in the pension sector, who warned that allowing individual opt-outs could make pension administration prohibitively complex and costly. Administering parallel pension systems for decades would undermine the collective efficiencies of the new system.

Ultimately, the proposal failed to obtain a parliamentary majority and did not pass the House of Representatives. Although short-lived, the debate triggered uncertainty among pension providers and demonstrated the political sensitivity of the transition. It also underlined the importance of legal stability in maintaining momentum for implementation.

Although a feared wave of litigation has not materialised, courts have already dealt with preliminary challenges. In one 2024 case, a retired civil servant failed to block the planned conversion at ABP, as the court found the legal claim premature. In another, a participant sought to suspend conversion at the Loodsen fund, arguing insufficient notice. The court rejected the claim, citing the fund's interests and the participant's actual gain in pension value. Nevertheless, multiple claim foundations have now been established in anticipation of future disputes once transitions are effectuated.

Execution delays: an emerging bottleneck

Despite clear legal deadlines, implementation progress varies widely. All transitions must be completed by 1 January 2028, but many employers – particularly those with pension schemes administered by insurers – have not yet taken the necessary steps to initiate the transition. While insurers and premium pension institutions (PPIs) still face the task of converting approximately 50,000 execution agreements, the bottleneck lies not with the providers, but with the employers. Notably, insurers and PPIs already have Wtp-compliant (“Wtp-proof”) pension products in place and are technically prepared to carry out the transitions.

A significant share of these transitions is now expected to take place in the final year of the implementation period, especially among insured schemes. This

raises serious concerns about execution capacity and compliance with statutory and fiscal requirements.

Employers' hesitation has multiple causes. Some face financial pressures in an uncertain economic environment. Others are engaged in organisational restructuring, leaving little bandwidth for pension-related decisions. In several sectors – particularly fragmented ones – there is a tendency to wait for collective sectoral developments before acting. Moreover, the complexity of the Wtp, combined with recent political uncertainty, has caused many employers to take a cautious stance and postpone engagement with the transition process.

If this inertia persists, a sharp year-end spike in transition activity may overwhelm the capacity of execution providers, advisers and regulatory bodies. Employers who fail to complete the transition on time may find themselves without a valid pension arrangement as of 2028, exposing them to tax penalties, regulatory enforcement, and legal claims by employees.

Outlook

The Wtp offers a well-considered and forward-looking framework to modernise Dutch occupational pensions. However, legal clarity alone will not suffice: the success of this transition depends on timely decisions, proactive planning, and adequate support from providers and policymakers. Employers who postpone action risk falling behind – with significant operational, fiscal and legal consequences. The coming years will be decisive in determining whether the Netherlands can realise its ambition of a more sustainable, transparent and balanced pension future.

International employers operating in the Dutch market should take particular note: failure to transition on time may not only lead to tax exposure, but also to reputational damage and employment law risks. Cross-border HR and legal teams are advised to monitor developments closely and align Dutch pension arrangements with group-level compliance timelines.

Legislative Proposals to Self-Employed Persons

For several decades, the Netherlands has struggled to enact clear legislation regarding self-employed persons. The Declaration of Employment Relationship

(VAR), introduced in 2005, was intended to provide freelancers with advanced clarity regarding their tax status. In practice, however, this regime often resulted in pseudo self-employment. Its successor, the Deregulation of Assessment of Employment Relationships Act (Wet DBA) of 2016, failed to resolve these issues and instead generated further uncertainty. Consequently, the Dutch Tax Authority implemented an enforcement moratorium, which remained in effect for nearly ten years. This moratorium was lifted earlier this year, once again causing unrest within society. To this day, it remains unclear when an individual qualifies as self-employed, which may result in tax penalties and retrospective assessments of employment relationship. As a result, parties are currently cautious about engaging contractors. Despite twenty years of legislative efforts, a satisfactory solution has yet to be achieved. Currently, there are two legislative proposals in place. First of all, the Clarification of Assessment of Employment Relationships Act (Wet VBAR), as amended (for the third time) and submitted on 7 July 2025, aims to provide greater clarity regarding the position of self-employed persons in the labour market. However, this proposal also creates uncertainty, according to four political parties, who initiated another legislative proposal: the Self-Employed Persons Act.

The Wet VBAR

In the original proposal from 2023, the legal assessment of the employment relationship consisted of three elements:

- criteria indicating employee status (W);
- criteria indicating self-employment within an assignment (Z); and
- Personal Entrepreneurship (outside the assignment) (OP).

The assessment initially focused on whether clarity regarding the employment classification could be obtained based on W and Z. If this was not possible, OP was then considered.

The government amended the bill following the Supreme Court's *Uber* judgment (HR 21 February 2025, [ECLI:NL:HR:2025:319](#)), which held that no hierarchy should be applied to the factors as formu-

lated in the *Deliveroo* judgment (HR 24 March 2023, [ECLI:NL:HR:2023:443](#)) and created (inter alia) the basis for the previous version of the Wet VBAR. This meant that the hierarchy previously established in the bill between the W and Z criteria on the one hand, and the OP criteria on the other, could not be maintained.

In the most recently amended version of the Wet VBAR, the qualification of the employment relationship is now based on two elements: W and Z. The OP element has been incorporated into the self-employment assessment, Z. The criteria regarding independent entrepreneurship are primarily aimed at whether the self-employed person operates at their own expense and risk. The criteria for employee status focus on substantive or organisational direction and control. Companies will need to assess, for each assignment, whether the individual qualifies as self-employed or as an employee.

Additionally, the bill aims to provide greater protection to low-paid pseudo self-employed workers by introducing a legal presumption. For self-employed persons (zzp'ers) earning less than EUR36 per hour, there will be a legal presumption of employee status. This will make it easier for them to claim employee rights. If a self-employed person invokes this presumption, it is up to the employer to prove that the individual is genuinely self-employed and not an employee. This provision remains unchanged from the previous version of the Wet VBAR.

The intended effective date of the Wet VBAR is 1 July 2026. The law does not provide for transitional arrangements, meaning that the new rules will apply immediately upon entry into force.

The Self-Employed Persons Act (Zelfstandigenwet)

This private member's bill intends to largely replace the Wet VBAR and pursues three objectives:

- to provide legal certainty for self-employed persons and their clients;
- to better align legislation with the modern labour market and to recognise the need for autonomy among a large group of self-employed persons; and

- to create a level playing field in the labour market and to improve the social protection of self-employed persons.

The bill therefore seeks to clarify the status of self-employed persons and to adapt legislation to the modern labour market, in which individuals desire greater freedom in their work. The aim is not to influence the number of self-employed persons, but to establish by law when an individual qualifies as self-employed, thereby providing legal certainty. The bill recognises self-employed persons and obliges them to make provisions for incapacity for work and for retirement, to guarantee social security and a level playing field.

The *Zelfstandigenwet* introduces a clear statutory assessment framework to determine when an individual may operate as a self-employed person. This framework consists of two tests: the self-employment test and the working relationship test. Both tests must be satisfied to obtain certainty regarding the contractor's self-employed status.

- Self-Employment Test – the individual must:
 - (a) operate at their own expense and risk;
 - (b) maintain proper accounts;
 - (c) conduct themselves as an independent entrepreneur in the economic sphere;
 - (d) make adequate provision for incapacity for work (the manner of provision is at the discretion of the self-employed person); and
 - (e) arrange a proportionate contribution for retirement provision (the manner of provision is at the discretion of the self-employed person).

- Working Relationship Test – the following conditions must be met:

- (a) there is freedom in the organisation of work;
- (b) there is freedom in the organisation of working hours;
- (c) there is no hierarchical control; and
- (d) the parties intend to perform work other than based on an employment contract.

The bill also makes it possible to introduce, at a sectoral level, a legal presumption of employment in sectors with high levels of pseudo self-employment. The sponsors also support a legal presumption of employment based on a minimum hourly rate, as provided for in the *Wet VBAR*.

Outlook

Ultimately, the House of Representatives will have to choose between *Wet VBAR*, *Zelfstandigenwet*, or neither of them. This choice will depend on the outcome of the elections for the House of Representatives on 29 October 2025 and whether enough political parties together will have a majority. Although it is time to have clear legislation in place, given the new elections it is questionable whether the proposed implementation date of 1 July 2026 will be met.

NIGERIA

Law and Practice

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Bloomfield LP is one of Nigeria's leading labour and employment law firms. Its expert team is composed of professionals with years of experience in corporate immigration, employment and labour law. The firm has built a strong reputation for addressing complex employment issues for major players across various industries, both locally and internationally. Its team excels in facilitating employer–employee negotiations, addressing complex matters such as terminations, mutual termination agreements and wrongful

termination claims. The team handles a robust portfolio of cases, offering legal advice on drafting essential employment documents – including employment contracts, company policies, handbooks and policy reviews – and helping clients ensure compliance with Nigerian laws. Its expertise also extends to advising on, inter alia, employee benefits, structuring agreements with employers of record, and navigating trade union negotiations.

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1. Employment Terms

1.1 Employee Status

There are two formally recognised employment categories, namely “workers” and “employees”.

Workers

Workers, as defined by the Nigerian Labour Act, encompass those who perform manual labour or clerical work. This category includes casual workers, contract staff and part-time workers. They may engage in physical tasks like construction, manufacturing and maintenance. Workers are entitled to the basic minimum protections prescribed under the Labour Act. Accordingly, employment contracts issued to workers are required to comply with the statutory minimum terms and conditions set out therein. In any instance where a contract of employment with a worker fails to meet such requirements, the relevant provisions of the Labour Act shall prevail.

Employees

Under the Labour Act, any individual engaged in administrative, executive, technical or professional functions is not a worker and is not covered under the Labour Act. Such persons are commonly referred to as employees. They typically work under formal employment contracts. Examples include full-time managers, engineers and lawyers.

Other Statuses

Apart from employees and workers, independent contractors form another significant category within the Nigerian labour market. These individuals, such as freelancers, operate without formal employee status or the full statutory protections provided to workers. They negotiate contracts for specific services and operate more independently within their respective professions.

1.2 Employment Contracts

There are three basic types of employment contracts.

- Full-time/permanent/indefinite employment contract – This type of contract provides indefinite employment with no set end date. Permanent employees are entitled to benefits such as health

insurance, pensions and paid vacations, in addition to their wages.

- Fixed-term/definite employment contract – This type of contract specifies a predetermined duration for the employment, typically for a specific project or period. Fixed-term employees may receive similar benefits to permanent employees but only for the contract’s duration.
- Part-time employment contract – This type of contract is entered into for employment with fewer working hours than a full-time position. Such contracts may also be for a definite or indefinite period.

Requirement of Contracts

Section 7 of the Labour Act requires employers to issue a written contract to workers within three months of starting the employment relationship.

For employees, while there is no statutory requirement for contracts to be in writing, it is highly advisable to have written contracts. Written contracts provide clarity and serve as a reference point, forming the basis of the formal employment relationship between the parties.

1.3 Working Hours

The Labour Act does not stipulate maximum working hours for workers. However, guidance is generally derived from the ILO Hours of Work Convention, 1919, which limits work hours in industrial undertakings to eight hours per day and 48 hours per week.

The Labour Act also permits flexible arrangements, stating that normal working hours can be determined:

- by mutual agreement;
- by collective bargaining within the organisation or industry concerned; or
- by an industrial wages board, established by relevant legislation, where there is no machinery for collective bargaining.

Flowing from the above, the Labour Act allows for flexible working arrangements within the legal limit of eight hours per day.

It is important to note that the Labour Act generally prohibits women and young persons from engaging in night work in the industrial and agricultural sectors. Therefore, flexible working arrangements must adhere to these restrictions.

While the Labour Act specifically applies to workers, it is generally expected to serve as a guideline for employers when setting work hours.

Terms Required for Part-Time Contracts

Section 7 of the Labour Act requires the inclusion of the following terms for workers:

- the nature of the employment;
- the duration of the employment;
- the appropriate notice period;
- the rates of wages and calculation thereof, and the manner and periodicity of payment of wages;
- terms and conditions relating to hours of work and overtime;
- statutory entitlements including leave, leave requirements and any provisions for sick pay, and maternity leave for female workers, etc; and
- any special conditions of the contract.

Employers may adopt similar terms for part-time employees.

Overtime

The Labour Act defines overtime as any work performed beyond the normal working hours stipulated in the agreement or contract between the employer and employee. The Labour Act does not mandate a specific limit on overtime hours or prescribe a set rate for overtime pay.

Regulation on overtime is minimal beyond this definition. Generally, the preferred approach is for the employer and employee to mutually agree on the rate of overtime compensation in the employment contract.

1.4 Compensation

The Federal Government of Nigeria (FGN) has approved a new minimum wage threshold for Nigerian workers. This new development was confirmed in the statement from the Office of the Minister of Informa-

tion announced on Thursday, 18 July 2024. The Executive Bill for this wage adjustment was presented to the National Assembly by Tuesday, 23 July 2024. The National Minimum Wage, as approved by the federal government, is NGN70,000 (USD43).

Thirteenth-month salaries and bonuses are not stipulated benefits under the law. These payments are typically outlined in employment contracts and can be determined by mutual agreement between the employer and employee. The agreement between the parties also determines whether such payments shall be mandatory or at the discretion of the employer, and under which circumstances they may be paid.

1.5 Other Employment Terms

Vacation/Leave in Nigeria

The Labour Act outlines the following provisions regarding leave and benefits.

- Workers with at least 12 months of service are entitled to a minimum of six working days of annual leave with full pay.
- Annual leave can be accumulated for up to two years with mutual agreement.
- Employers cannot provide monetary compensation instead of leave, except upon termination.
- Public holidays during annual leave do not count against leave entitlement.
- Leave allowance is not mandated by law but may be provided as per contracts or company policies.
- There is no standard or mandated leave allowance calculation. Leave allowance varies from one employer to another based on the contract.
- A worker is entitled to up to 12 working days of paid sick leave per calendar year for temporary illness certified by a registered medical practitioner.
- Women are entitled to 12 weeks of maternity leave, with six weeks taken before delivery and six weeks after. During this period, they should receive at least 50% of their salary. Some states may have different maternity leave regulations.
- A nursing mother is permitted half an hour, twice a day during working hours, to nurse her child.
- Paternity leave is not provided under the Labour Act but is approved by the federal government for men working in public service or federal roles. Some states in Nigeria, namely Enugu and Lagos,

offer paternity leave to male employees in public service. Enugu permits three weeks, while Lagos permits two weeks for the first two children of such employees. Paternity leave pay is not specified/mandated under these regulations.

While the provisions of the Act specifically cover workers, the National Industrial Court (NIC) often uses them as a standard for leave benefits for employees in Nigeria. Employers are also encouraged to adhere to international standards and best practices as the NIC has statutory authority to apply ratified international laws in its judgments.

Limitations on Confidentiality and Non-Disparagement Agreements

Nigeria does not have statutory provisions addressing confidentiality and non-disparagement agreements comprehensively. However, the NIC generally considers the following limitations when evaluating the enforceability of such agreements.

- Public domain – Information that becomes publicly known through lawful means cannot be subject to confidentiality obligations. Once information is in the public domain, it loses its confidential status.
- Public order, public policy or legal requirements – Confidentiality and non-disparagement agreements cannot override laws, public policy or legal requirements. Employees have the right to disclose information required by law or in the public interest, such as illegal activities or matters affecting public safety.
- Illegality – Confidentiality clauses in employment contracts or contracts related to illegal activities are generally illegal ab initio. Courts would not enforce agreements that involve illegal activities or are against public policy.

Employee Liability for Breach of Confidentiality and Non-Disparagement Agreements

An employee may incur the following liabilities.

- Termination of employment for breach of confidentiality and/or non-disparagement agreement where such can be proven and constitutes a valid ground for termination under the contract.
- Damages for breach of contract.

- Accounting for profits obtained by the employee as a result of the breach.
- Contractual penalties (if specified under the contract).
- Bearing the cost for legal action by the employer (at the discretion of the court).

Limitation of liability

For these liabilities to apply, the employer must be able to demonstrate that a breach occurred and provide evidence of the damages incurred or profits obtained by the employee.

2. Restrictive Covenants

2.1 Non-Competes

Requirement of Reasonableness for the Validity of Non-Compete Clauses

Nigerian courts emphasise the importance of reasonableness in non-compete agreements. The restrictions imposed by any such clause – such as geographic scope, duration and the specific line of business being restricted – must be fair and balanced. The terms must be clearly defined and proportionate to protect the legitimate business interests of the employer.

Enforcement of Non-Compete Clauses

The enforceability of non-compete clauses hinges on their reasonableness and their necessity to protect the employer's legitimate business interests, rather than merely stifling competition. Each case is evaluated on its merits. For instance, in the case of *Lacasera Company v Mr Prahad Gangadharan*, the court deemed a non-compete clause invalid and unfair for prohibiting the employee from accepting any job in a similar field for five years post-employment. Similarly, in *7th Heaven Bistro Limited v Mr Amit*, the NIC ruled against a three-year non-compete clause deemed excessively restrictive and unfair.

Courts assess factors such as the nature of the employer's business, the employee's access to confidential information or trade secrets, and the impact of the restriction on the employee's ability to earn a livelihood.

2.2 Non-Solicits

Non-solicitation clauses in employment contracts are designed to prevent former employees from enticing current employees to leave the company and join a competitor or a new business venture. Non-solicitation clauses relating to customers prevent former employees from contacting or soliciting the former employer's clients, customers or business contacts after they leave the company. These clauses are essential for protecting the company's business relationships, workforce and client base.

For non-solicitation clauses to be enforceable, they must be reasonable in scope, duration and geographical area. The Nigerian courts typically seek to ensure that these clauses are not overly restrictive and do not unfairly limit an individual's ability to work. For instance, in the case of *Infinity Tyres Limited v Mr Sanjay Kumar & 3 Others* (Unreported Suit No NICN/LA/170/2014), the NIC emphasised the importance of specificity and reasonableness in non-solicitation clauses. The court noted that while it could have upheld the clause if it specified the industry or company to which the restraint applied, it ultimately rejected the clause for being overly broad. The clause attempted to prevent Mr Kumar from taking up any employment in Nigeria, which the court found unreasonable and non-specific.

3. Data Privacy

3.1 Data Privacy Law and Employment

Nigeria does not have a comprehensive regulation specifically protecting data privacy in the workplace. However, several existing laws can be applied to address data privacy protection in the workplace.

- The Constitution of the Federal Republic of Nigeria (1999), as amended – This guarantees the right to privacy of citizens.
- The Nigeria Data Protection Regulation (NDPR) 2019 – This provides comprehensive guidelines on data protection and privacy. It mandates organisations, including employers, to ensure the confidentiality, integrity and availability of personal data. It requires employers to obtain consent for data collection, limit data use to necessary purposes,

secure data, and uphold employees' rights to access and correct their data.

- The Cybercrimes (Prohibition, Prevention, Etc) Act 2015 – This Act prohibits unlawful interception of communications and mandates data protection measures.

4. Foreign Workers

4.1 Limitations on Foreign Workers

Foreign employees and companies hiring foreign employees must obtain the necessary permits, including an expatriate quota, a visa, and a Combined Expatriate Residence Permit and Aliens Card (CERPAC) or temporary work permit, depending on the duration of the work.

Employers must facilitate skill transfer from expatriates to local employees through training programmes to enable Nigerians to take over such positions after a period. The government enforces local content policies, especially in sectors like oil and gas, to prioritise Nigerian employment. Companies must prove they have conducted labour market testing to show the unavailability of local talent before hiring expatriates.

4.2 Registration Requirements for Foreign Workers

Business Permit

A Business Permit is a statutory approval issued by the Federal Ministry of Interior that allows a foreign-owned company to legally operate and engage in business activities in Nigeria. It is a prerequisite for companies with any level of foreign participation before applying for expatriate quotas or employing foreign nationals.

Expatriate Quota

Companies intending to employ expatriates must register and obtain an expatriate quota from the Ministry of Interior.

Combined Expatriate Residence Permit and Aliens Card (CERPAC)

Foreign employees employed by a Nigerian company must register with the Nigerian Immigration Service (NIS) upon arrival and obtain a CERPAC. This serves

as both a residence permit and a work authorisation document.

ECOWAS Residence Card

Foreign nationals from ECOWAS member states are exempt from the CERPAC requirement. In place of this, they must obtain an ECOWAS Residence Card, which authorises them to live and work in Nigeria in accordance with the ECOWAS Protocol on Free Movement of Persons, Residence and Establishment.

E-Migrant Registration

Foreign employees must also complete e-migrant registration with the NIS. This involves providing personal details, employment information and any other relevant documentation required by the NIS.

5. New Work

5.1 Mobile Work

There are no specific regulations regarding mobile work in Nigeria.

Data Privacy

While there is no specific law on data privacy during mobile work, the NDPR requires organisations to protect personal data collected or processed within Nigeria. Employers must ensure that data accessed or processed during mobile work is handled in compliance with this regulation. Employees must also be informed about how their data will be collected, used and protected.

Occupational Safety and Health

Employers are required under the Factories Act and the Labour Act to ensure the safety and health of their employees, including those engaged in mobile work. Employers must conduct risk assessments for mobile work environments and provide necessary safety equipment and training to mitigate risks. Employees must also adhere to safety protocols and report any hazards encountered during mobile work.

5.2 Sabbaticals

There is no specific national legislation governing sabbaticals, but they are a well-established practice in academia and public service.

Public Sector

In the Nigerian public sector, under the provision of the Public Service Rules, officers on Grade Level 15 and above are eligible for a one-year sabbatical leave.

Academic Institutions

Sabbatical leave is most common in academic institutions. Universities and research centres typically grant sabbatical leave to faculty members for research, further education or other scholarly activities. This leave is usually granted every seven years for a duration of up to one year.

Private Sector

Some progressive private sector companies may offer sabbatical leave as part of their employee benefits package or may grant such on request. This leave can be used for personal growth, for skill development or to prevent burnout.

5.3 Other New Manifestations

There is no regulatory provision with regard to desk sharing; however, since the COVID-19 pandemic, many private employers that have designed remote work policies have added desk sharing as part of the policy in order to manage office space.

6. Collective Relations

6.1 Unions

Trade unions play a significant role in the labour market in Nigeria, serving as vital intermediaries between workers, employees and employers. They have a strong historical presence and continue to influence labour relations, workplace conditions and labour laws. Once a union is duly registered by the Registrar of Unions, it gains recognition under Nigerian law and possesses the legal authority to exercise various powers as stipulated by the Trade Unions Act, including negotiation and advocacy, dispute resolution, legal representation in disputes, etc.

Role of Unions

Trade unions are involved in the following:

- promotion of collective bargaining agreements;

- maintaining peace and harmony in the work environment;
- contribution to members' welfare; and
- representation of employees.

6.2 Employee Representative Bodies

See 6.1 Unions.

6.3 Collective Bargaining Agreements

Collective bargaining agreements (CBAs) are legally binding contracts negotiated between employers and labour unions or representatives on behalf of employees. These agreements record the terms and conditions of employment, including the following:

- wages;
- working hours;
- benefits;
- grievance procedures; and
- other workplace policies reached between the parties after the bargaining process.

The process of negotiating a CBA involves both parties bargaining in good faith to reach mutually acceptable terms that balance the interests of labour and management. They are enforceable under Nigerian labour law and provide a framework for resolving disputes through agreed-upon procedures, thereby promoting harmonious employer–employee relations.

In Nigeria, CBAs are recognised in both public and private employment.

7. Termination

7.1 Grounds for Termination

Motive for Termination of Employment

Previously, the law on termination was that motive was irrelevant as long as the terms of the contract were complied with, and an employer had the right to terminate an employee's contract either with or without reason, provided this was done within the ambit of the law and the clearly stated provisions of the employment contract. That position has, however, shifted, with the NIC specifying that an employer must now provide a valid reason for such termination connected with the capacity or conduct of the worker or based

on the operational requirements of the undertaking, establishment or service, as held in *Duru v Skye Bank Plc* and *Aloysius v Diamond Bank Plc*.

Procedure for Dismissal

An employer has the right to terminate an employment contract through dismissal without notice in cases of gross misconduct, as defined by common law. This right is typically outlined in the employment contract, which specifies the grounds for such dismissal. Commonly reaffirmed grounds under Nigerian law include fraud, criminal conduct, professional misconduct, incapacity, dishonesty, etc. The procedural requirements for dismissal vary depending on the grounds for termination.

Performance-related dismissal

The procedure for performance-related dismissal is as follows.

- Document performance issues and provide feedback.
- Issue formal warnings and offer a performance improvement plan.
- Allow the employee time to improve their performance.
- If there is no improvement, proceed with termination, ensuring the process and documentation are clear and transparent.

Misconduct-related dismissal

The procedure for misconduct-related dismissal is as follows.

- Conduct a thorough investigation of the alleged misconduct.
- Provide the employee with an opportunity to respond to the allegations (*Baba v NCATC* (1991) 5 NWLR (Pt. 192) 388).
- Based on the investigation and hearing, decide on termination for gross misconduct (*Olatunbosun v NISER Council* (1988) 3 NWLR (Pt. 80) 25).

Generally, where the employment contract has set out the procedure, it should be followed, and the employers must ensure they align with best practices and legal standards.

Collective Redundancies

Collective redundancies are permitted and recognised under Nigerian law. The Labour Act, which is the primary legislation regulating labour and employment, defines redundancy as an involuntary and permanent loss of employment caused by excess manpower. Flowing from this, various reasons have been accepted/endorsed by the Nigerian courts as being valid grounds for redundancy, including technological advancement.

Procedure for Collective Redundancies

The Labour Act outlines the steps an employer must take in the event of redundancy.

- Notification – The employer must inform the trade union or workers' representative of the reasons for and the extent of the anticipated redundancy.
- Selection criteria – The principle of “last in, first out” should be adopted for the category of workers affected, taking into account factors such as skill, ability and reliability.
- Redundancy payments – Negotiations should be conducted regarding redundancy payments to any discharged workers.

The above procedure applies to workers as defined by the Labour Act.

For employees

In the case of employees, redundancies are regulated by the terms of the employment contract, the CBA (if applicable) and the company's handbook (collectively referred to as the “Documents”). When a dispute arises, the court will enforce the terms of these Documents.

Additionally, with the NIC's growing reliance on international best practices, employers are encouraged to observe the provisions of the International Labour Organization (ILO) Convention No 158 on the Termination of Employment, particularly where the contract or internal policy is silent. This Convention provides for:

- prior consultation with the employee(s) or their representatives;
- adequate notice of termination;
- objective selection criteria; and

- provision of severance pay or other terminal benefits to those affected.

Though Nigeria has not ratified ILO Convention No 158, the NIC has in several decisions applied its principles, thereby making compliance a matter of best practice and risk mitigation.

Entitlements for workers

For workers, entitlements will be determined by the outcome of negotiations between the trade union/employee representatives and the employer.

The law states that the removal of an employee by redundancy does not entitle them to any benefits beyond those specified in the employment contract. Therefore, the entitlements of an employee declared redundant are strictly as agreed in the contract. If the employment contract or applicable document specifies redundancy payments or benefits, the employer must comply with these terms; otherwise, it may constitute a breach of contract.

However, where the contract is silent, it is advisable to negotiate redundancy benefits as required under ILO Convention No 158.

7.2 Notice Periods

Notice Period

The Labour Act provides statutory notice periods for workers in Nigeria. The length of the notice period typically depends on the worker's length of service and the terms specified in the employment contract. According to the Labour Act, the notice periods are as follows:

- one day's notice for a worker who has been employed for a period of three months or less;
- one week's notice for a worker who has been employed for more than three months but less than two years;
- two weeks' notice for a worker who has been employed for a period of two years but less than five years; and
- one month's notice for a worker who has been employed for five years or more.

For employees, the notice periods are generally defined under the employment contract. However, most employers are guided by the provisions of the Labour Act in defining their notice periods.

Formalities to be Observed

Written notice

The notice of termination must be in writing.

Employment contract

The employment contract may specify certain formalities to be observed in the case of termination. Where this is the case, the employer must carry out all the necessary formalities.

Payment in lieu of notice

By virtue of Sections 11 (6) and (9) of the Labour Act, employers can terminate employment immediately by paying the worker for the notice period instead of requiring them to work through it. The same applies for employees if so provided under the employment contract. The termination notice must inform the employee of this.

Payment of outstanding benefits

The employer is required to pay any outstanding benefits, including:

- the salary of the employee for the period already worked;
- salary in lieu of notice if termination is immediate;
- severance pay, if any, as specified in the employment contract;
- accrued leave pay for unused annual leave, including pro-rated leave and any carried-over days; and
- other earned entitlements such as bonuses and allowances, as provided in the employment contract.

Severance Pay

The Labour Act does not mandate severance pay for general terminations. However, the terms of the employment contract or CBA may stipulate severance pay and, in such cases, the employer is obligated to comply with those terms. Many employment contracts include clauses that provide for severance pay in the event of termination, especially for higher-level

employees or where CBAs are in place. Employers must adhere to these contractual obligations.

Furthermore, in cases of redundancy, the Labour Act requires that redundancy payments be negotiated with the trade union or workers' representatives. The specific amount and terms of redundancy pay are not defined by law but can be determined through negotiations between the employer and the workers' representatives.

While external advice is not legally required for terminating employment, it is often advisable for employers to seek legal counsel before proceeding with termination to ensure compliance with relevant laws and reduce the possibility of wrongful termination claims. For mass lay-offs and redundancies, notifying the relevant labour authorities may be necessary.

7.3 Dismissal for (Serious) Cause

Summary Dismissal

Summary dismissal is the immediate termination of an employee's contract without notice due to serious misconduct or significant failure in performance. This is justified under common law based on the employee's conduct or capabilities. The Nigerian case *Jombo v Petroleum Equalisation Fund (Management Board) & Others* highlights the distinction between termination and dismissal: "termination" or "dismissal" of an employee by the employer means bringing the employment to an end. Under a termination of appointment, the employee is enabled to receive the terminal benefits under the contract of employment. Dismissal, on the other hand, is punitive and, depending on the contract of employment, very often entails a loss of terminal benefits.

Generally, where the employment contract has set out the procedure, the contract specifies a procedure for dismissal, and it must be strictly followed. Employers must ensure the procedure outlined under the contract is in alignment with best practices and legal standards.

The procedural requirements for dismissal vary depending on the grounds for termination.

Performance-related dismissal

The procedure for performance-related dismissal is as follows:

- document performance issues and provide feedback;
- issue formal warnings and offer a performance improvement plan;
- allow the employee time to improve their performance; and
- if there is no improvement, proceed with termination, ensuring the process and documentation are clear and transparent.

Misconduct-related dismissal

The procedure for misconduct-related dismissal is as follows:

- conduct a thorough investigation of the alleged misconduct;
- provide the employee with an opportunity to respond to the allegations (*Baba v NCATC* (1991) 5 NWLR (Pt. 192) 388); and
- based on the investigation and hearing, decide on termination for gross misconduct (*Olatunbosun v NISER Council* (1988) 3 NWLR (Pt. 80) 25).

Consequences

Failure to follow the appropriate process or lack of valid grounds for dismissal can lead to several adverse outcomes.

- Damages – Employees may successfully claim unfair dismissal, resulting in damages awarded against the employer.
- Loss of reputation – Mishandling dismissals can damage the employer's reputation.
- Legal costs – Employers may incur significant legal expenses.
- Reinstatement – Courts may order the reinstatement of the employee to their former position.

7.4 Termination Agreements

Termination agreements are permissible in Nigeria. They stand as legally binding contracts between an employer and an employee that outline the terms and conditions of the employee's departure from the company. Termination agreements must comply with

the requirements/formalities of a contract under law. These include the following.

- Form – The agreement must be in writing, signed by the parties and witnessed.
- Mutual consent – The agreement must be made mutually by both parties, free from fraud, duress, undue influence, or other vitiating factors that could invalidate the contract.
- Consideration – There must be a form of consideration provided, such as terminal benefits. These benefits should be clearly negotiated and included in the termination agreement.

Limitations on Termination Agreement Terms

Non-disparagement clauses

Such clauses must not infringe on the employee's freedom of speech to an unreasonable extent.

Confidentiality agreements

Any confidentiality clauses should be specific and not overly broad to avoid being considered unenforceable.

Restrictive covenants

Restrictive covenants such as non-compete or non-solicitation clauses must be reasonable in terms of duration, geographical scope and scope of activities restricted.

Waivers of future claims

The agreement cannot lawfully waive the employee's right to bring future claims relating to issues that may arise after the agreement is signed.

Lay-offs and redundancies

In cases of mass lay-offs or redundancies, employers may need to comply with additional regulatory requirements, such as notifying the relevant labour authorities before concluding such termination agreements.

7.5 Protected Categories of Employee

By virtue of Section 54 (4) of the Labour Act, employers are prohibited from terminating the contract of any female worker who is absent due to maternity leave, or who remains absent from her work for a longer period as a result of illness that arose out of her pregnancy or confinement and renders her unfit for work.

Furthermore, under the Guidelines for the Release of Staff in the Nigerian Oil and Gas Industry 2019, employers that hold an oil mining lease, licence or permit (or an interest therein) issued under the Petroleum Act or under regulations made pursuant to the Petroleum Act are required to obtain an approval from the Minister of Petroleum Resources (the “Minister”) for the dismissal of a worker. The Department of Petroleum Resources will conduct an inquiry into the circumstances of the proposed staff release and make a decision on whether to convey the Minister’s approval or otherwise.

The Staff Release Guidelines stipulate a penalty, not exceeding the sum of USD250,000, for failure to comply with the Staff Release Guidelines.

8. Disputes

8.1 Wrongful Dismissal

Wrongful dismissal claims can arise from several factors, including:

- failure to follow due process:
 - (a) not providing a fair hearing;
 - (b) not adhering to procedures outlined in the employment contract;
- dismissal on invalid grounds:
 - (a) termination based on grounds not justified by evidence;
 - (b) discriminatory or retaliatory dismissal; and
- lack of sufficient proof:
 - (a) insufficient documentation or evidence to support the reasons for dismissal.

Consequences of Wrongful Dismissal Claim

Failure to follow the appropriate process or lack of valid grounds for dismissal can lead to several adverse outcomes.

- Damages – Employees may successfully claim unfair dismissal, resulting in damages awarded against the employer.
- Loss of reputation – Mishandling dismissals can damage the employer’s reputation.
- Legal costs – Employers may incur significant legal expenses and may be required by court to recom-

pense the employee for the legal cost of the court proceeding.

- Reinstatement – Courts may order the reinstatement of the employee to their former position.

8.2 Anti-Discrimination

Grounds for Claims of Discrimination

The NIC rules provide that where there is a claim of alleged workplace discrimination, the claimant shall state on which grounds the claim is based, which may include the following:

- ancestry;
- religion;
- gender;
- marital status;
- family situation;
- genetic heritage;
- ethnic origin;
- political or ideological convictions;
- union affiliation;
- tribe;
- handicap or disability;
- health;
- pregnancy; and
- any other ground.

Burden of Proof

In Nigeria, the burden of proof for discrimination in the workplace primarily rests on the employee (the one who alleges the discrimination). The employee must provide sufficient evidence to support their claim of discriminatory practices by the employer. Once the employee establishes a prima facie case of discrimination, the burden shifts to the employer to provide a legitimate, non-discriminatory reason for the actions in question. The decision of the court is usually based on the balance of probabilities.

In termination cases where there is a claim of termination for discriminatory reasons, it is not for the employee to show that the termination was discriminatory; it is for the employer to justify the said termination. The law is that once an employer gives a reason for terminating or dismissing an employee, the burden lies with the employer to justify the said reason (*Angel Shipping & Dyeing Ltd v Ajah* (2000) 13 NWLR (Pt. 685) 551 CA).

8.3 Digitalisation

Virtual Hearings and Remote Court Sitings

Due to the COVID-19 pandemic, the NIC was prompted to commence virtual hearings, as recommended by the Court of Appeal. Following this, the NIC Practice Directions of 2020 included provisions for virtual proceedings. The NIC continues to practise virtual hearings, allowing parties to participate in their proceedings from any part of the country via their website.

The NIC encourages and promotes virtual court sitings (also referred to as “remote court sitings” or “online court sitings”) for matters that do not require the taking of evidence.

E-filing Centre

The NIC Rules, Order 6A, establishes an E-filing Centre for electronic filing and the payment of filing fees for processes and documents relating to or connected with a matter before the court.

It provides that a party or counsel to a party may e-file any process or document that may be filed with the court in paper form, except:

- documents to be presented to the court in camera (ie, in chambers) solely for the purpose of obtaining a ruling; and
- documents to which access is otherwise restricted by law or court order.

9. Dispute Resolution

9.1 Litigation

Specialised Employment Forums

The NIC is the primary forum for employment disputes in Nigeria. As established by the 1999 Nigerian Constitution (Third Alteration) Amendment Act 2010, it has exclusive jurisdiction over the following matters:

- labour;
- employment;
- trade unions;
- industrial relations; and
- conditions of service.

In furtherance of its authority, the NIC has established an additional forum for hearing employment disputes through means of alternative dispute resolution (ADR) – the NIC Alternative Dispute Resolution Centre. The NIC offers parties the option of ADR using two mechanisms – mediation and conciliation. The ADR Centre may handle:

- civil matters involving disputes between employers and employees;
- disputes arising from health at the workplace;
- disputes arising from safety at the workplace; and
- disputes arising from the welfare of workers.

Class Action Claims

Class action claims are permitted in employment disputes in Nigeria. According to Order 13 Rule 11 of the NIC Rules, if numerous persons have the same interest in one suit, one or more such persons may sue or be sued on behalf of all interested parties.

Representation in Court

In employment litigation before the NIC, parties can be represented by the following.

- Legal counsel – Both employees and employers are often represented in court by their legal counsels.
- Trade unions or employee associations – These bodies may represent their members, especially in collective disputes.
- Class action representatives – In class action claims, one or more persons with the same interest can represent the entire group of affected individuals.

9.2 Alternative Dispute Resolution

Arbitration in Employment Disputes

Where arbitration is provided under the employment contract as the means of dispute resolution, the parties may resort to arbitration to resolve any dispute arising from the employment contract. However, while such clauses may serve a guiding or persuasive role, they do not oust the exclusive jurisdiction of the National Industrial Court (NIC) of Nigeria. Parties are just given the avenue and possibility of settling their dispute amicably out of court. A party to an agreement with an arbitration clause has the option either

to submit to arbitration or to have the dispute decided by court.

This position was confirmed by the NIC in *Mr Ibitala Oludemi v Alcon Nigeria Limited* (NICN/PHC/120/2022), where the defendant objected to the court's jurisdiction on the grounds of an arbitration clause in the employment contract not being fulfilled. The court dismissed the objection, holding that the existence of such a clause does not bar a party from initiating proceedings before the NIC. The court stated clearly that "parties have the option to either submit to arbitration or to have their dispute decided by Court", and concluded that it had the jurisdiction to hear and determine the matter.

In summary, while parties may include arbitration clauses in employment contracts, such provisions are not strictly enforceable, and either party may approach the NIC directly without first submitting the dispute to arbitration.

Arbitration Agreements

Arbitration agreements are enforceable in Nigeria where the court has jurisdiction. For the court to have jurisdiction over an application for recognition and enforcement of an award, one of the following conditions must be met:

- the award debtor must be in Nigeria or be a Nigerian; or
- the assets sought for enforcement must be within Nigeria.

9.3 Costs

A prevailing employee or employer can be awarded attorney's fees or other costs. According to Order 55 of the NIC Civil Procedure Rules, the following rules apply to the award of costs in employment disputes.

- The costs of the entire suit and each specific proceeding are at the discretion of the court as regards the party by which they are to be paid.
- Even if a party is successful, the court can order it to pay the costs of any particular proceeding.
- The court may order costs to be paid out of any fund or property related to the suit.
- In fixing the amount of costs, the principle to be observed is that the successful party is to be indemnified for the expenses that party unnecessarily incurred in the proceedings. The judge may summarily fix the amount of cost at the time of delivery of judgment. However, the court may stay the proceeding pending the payment of the costs of any party.

Trends and Developments

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ÆLEX

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Nigeria's Employment Law Landscape in 2025: Quiet Evolution, Global Ambition

Nigeria's employment law in 2025 is not standing still – it is quietly but steadily reshaping itself to meet the realities of a changing workplace. A careful blend of statutory reform, global labour standards and regulatory tightening is being seen, all moving towards a more modern and responsive system.

Recent milestones tell the story: the National Minimum Wage Amendment Act 2024 has both increased the wage floor and shortened the review cycle, creating more predictable upward adjustments. The Informal Sector Employment Agents (Registration & Licensing) Bill aims to bring structure to Nigeria's vast informal workforce (one of the largest in Africa) while the Revised National Employment Policy 2025 refreshes the country's employment blueprint to reflect international labour norms and the realities of the modern workplace. Even regulators, such as the National Pension Commission, have stepped up enforcement, tightening pension compliance across the board.

On the judicial front, the National Industrial Court of Nigeria continues to play an active role in shaping the workplace of tomorrow. Its progressive decisions (often in line with international practice) are steadily expanding the interpretation of employee rights and employer duties, ensuring that the law keeps pace with the shifting nature of work.

The picture that emerges is one of quiet but deliberate transformation. Nigeria's labour framework is moving

towards greater alignment with global best practices while grappling with uniquely local challenges. The following sections explore these developments in more detail, unpacking both their practical and strategic implications for employers and their advisers.

Statutory and Regulatory Trends

The National Minimum Wage (Amendment) Act 2024

Following extensive negotiations and agreement between the Nigerian federal government and labour unions, the National Minimum Wage Amendment Act 2024 was enacted in July 2024. This amendment increased the minimum wage from the previous sum of NGN30,000 to NGN70,000, and reduced the statutory review cycle from five to three years; the new minimum wage was to apply retroactively from 1 May 2024.

This long-awaited amendment better aligns wages with inflationary trends and the rising cost of living in Nigeria.

The Informal Sector Employment Agents (Registration & Licensing) Bill

The proposed Informal Sector Employment Agents (Registration & Licensing) Bill addresses the absence of structured legal protection for informal workers engaged through non-standard recruitment channels. The Bill also introduces licensing requirements for employment agents, operational guidelines, and penalties for non-compliance with labour standards.

If enacted, it will expand the protective scope of Nigerian labour law to millions of informal workers in domestic service, artisanal trades, internships and casual labour, many of whom currently operate without contracts, dispute resolution mechanisms, or access to social security schemes. The National Directorate of Employment (NDE) would have oversight and enforcement functions upon enactment.

The Bill passed second reading in May 2025 and is currently under committee review.

The Revised National Employment Policy 2025

The Revised National Employment Policy 2025 (the “NEP 2025”) presents a strategic reorientation of Nigeria’s labour agenda and signals a decisive shift from reactive labour management to anticipatory workforce planning. The NEP 2025 focuses on digital economy integration, green industry growth and remote work. It looks to address Nigeria’s widening skills gap through targeted vocational training, incentives for technology start-ups, and infrastructure investment to support online and platform-based enterprises. The NEP 2025 also acknowledges remote work as a legitimate mode of employment, with implications for taxation, social security and occupational safety in decentralised work environments.

The NEP 2025 will become significant, as it paves the way for future statutory definitions and protections tailored to geographically flexible labour relationships.

Pension reforms and compliance

The National Pension Commission (PenCom) issued two major directives in 2025 that jointly reshape the administration of retirement benefits and the compliance obligations of businesses engaging with pension-regulated entities.

Removal of PenCom pre-approval for retirement benefits

On 12 March 2025, PenCom reformed the approval and payment process under the Contributory Pension Scheme (CPS). Previously, pension fund administrators (PFAs) were required to submit all retirement benefit applications to PenCom for approval before instructing pension fund custodians (PFCs) to make payments.

Since 1 June 2025, PFAs have independently processed and approved programmed withdrawals, annuities, voluntary contributions and other entitlements, and the PFCs are to disburse within 24 hours of receiving instructions to do so. PenCom’s approval remains necessary for depleted RSA cases and death benefits, but PFAs now bear direct responsibility for verifying compliance with PRA requirements before payment.

This reform accelerates benefit delivery and reduces the bureaucratic lag in the pension system.

Pension clearance certificate requirement for LPFO transactions

On 22 May 2025, PenCom issued a directive requiring all licensed pension fund operators (LPFOs) to ensure that vendors, service providers and counterparties are compliant with the Pension Reform Act 2014, through the presentation of a valid Pension Clearance Certificate (PCC).

By this directive, LPFOs are authorised to conduct business only with entities that can produce a PCC, making it the principal proof of compliance for pension remittance obligations. The requirement applies to operational contracts and financial transactions, establishing the PCC as a foundational condition for engagement across public and private sectors. A six-month transition period was provided before full enforcement, which allows organisations time to align internal processes.

By embedding pension compliance into commercial eligibility and routine corporate governance, the directive reinforces accountability, strengthens statutory adherence, and elevates the role of social security obligations within business operations.

Judicial Trends

Beyond legislative and policy reforms, the National Industrial Court of Nigeria (NICN) has been actively shaping the direction of Nigerian employment law through recent jurisprudence. These decisions are not only relevant domestically but offer valuable insights for multinational employers, cross-border counsel and investors who must navigate Nigeria’s rapidly evolving labour landscape. The following notable cases

illustrate key principles that align Nigerian law with (or distinguish it from) international employment law standards.

Accrued leave: a mandatory right that cannot be forfeited

Sir Timothy Amobi Nwosu v Union Bank of Nigeria Plc (NICN/EN/54/2019, 20 June 2025)

In a decision with significant implications for workforce management policies, the NICN held that leave entitlements are a mandatory health-preserving right, not a discretionary perk. Even if an employee does not formally apply for leave, systemic failure to grant it constitutes a breach of contract. The court rejected arguments that expired collective agreements or employee inaction extinguish the entitlement.

Why this matters

Employers with global operations in Nigeria must note that “use it or lose it” leave policies common in some jurisdictions may be unenforceable locally. The ruling underscores that Nigerian law imposes a proactive obligation on employers to ensure that staff actually take leave – a standard that could affect compliance audits, HR practices and cross-border policy harmonisation.

Conversion of employment status: consent under duress is no consent

Ms Busayo Sodipe v Minnesota Nigeria Limited (NICN/LA/117/2017, 28 March 2025)

The court found fault with a restructuring exercise that converted permanent employees to contract status, finding that the claimant’s “agreement” was obtained under economic coercion. Permanent employment rights and accrued benefits cannot be unilaterally eroded, even in financial distress.

Why this matters

The judgment sends a clear warning that cost-saving measures and contractual changes in Nigeria will be closely scrutinised for genuine consent and procedural fairness. For multinationals, restructuring templates used elsewhere may need localisation to withstand Nigerian legal tests.

Currency of salary payments: contract terms override employer discretion

Mr Salim Ally Buckus v Greenstone Auto Repairs Limited and Others (NICN/LA/08/2018, 11 March 2025)

Where an employment contract specifies payment in a foreign currency, an employer cannot unilaterally switch to Nigerian naira, even during foreign exchange shortages. The NICN awarded compensation for exchange rate losses and upheld other contractual entitlements.

Why this matters

This is particularly relevant for expatriate contracts and international secondees. The ruling emphasises that Nigerian courts will enforce currency clauses notwithstanding regulatory or market constraints, heightening the need for careful drafting and contingency planning.

Next-of-kin versus legal heirs: administrative designation is not inheritance law

Olalekan Anthony Akande v Associated Maritime Services Ltd and Others (NICN/PHC/76/2021, 11 February 2025)

The court clarified that naming someone as “next-of-kin” in employment records does not override statutory inheritance rights. Legal heirs (typically spouses and children) take precedence in accessing terminal benefits.

Why this matters

HR teams in Nigeria should ensure that employee documentation aligns with estate planning laws. Relying solely on next-of-kin forms for benefits designation can create disputes and delay payments, especially for multinational firms managing death-in-service benefits.

Redundancy: lawful reason, wrongful execution

Charles Omenukwa v EnerMech Nigeria Limited (NICN/LAG/344/2021, 11 July 2025)

While the court accepted redundancy as a legitimate basis for termination, it still found the process wrongful for failure to pay contractual notice. The decision highlights that even valid restructuring reasons cannot excuse procedural breaches.

Why this matters

This aligns with global “substance + process” termination standards. Multinationals implementing redundancies in Nigeria must ensure both justification and strict adherence to notice/payment requirements.

Fixed-term contracts: no reason required for non-renewal

Mr Constantine Alimonos v Honeywell Flour Mills Plc (NICN/LA/161/2023, 28 July 2025)

The NICN confirmed that, in the absence of a renewal agreement, a fixed-term contract can end without stating a reason. However, failing to give the required notice may still constitute wrongful termination.

Why this matters

This reflects a stricter contractualist approach than in some jurisdictions where non-renewal can be scrutinised for fairness. Employers should ensure clear drafting of duration, renewal and notice provisions.

Jurisdiction over domestic work

SJ Abed General Enterprises Ltd v Mrs Patience Friday Emmanson (NICN/PHC/22/2019, 11 February 2025)

The court reaffirmed its jurisdiction over all workers, including domestic staff, but found no company liability where the engagement was purely personal to a director.

Why this matters

This reinforces that the NICN’s reach covers unconventional or informal work arrangements. Employers and individuals alike must be mindful that “private” engagements can still fall under Nigerian labour jurisdiction.

Workplace safety and co-employment liability

Bayem P Mirabel v Top Steel Nigeria Limited and Others (NICN/LA/570/2017, 24 July 2025)

The court held that both a principal employer and its contractor could be jointly liable for workplace injuries under a triangular employment relationship, where control and supervision were shared. The judgment also faulted the defendants for not complying with mandatory injury-reporting obligations under the Employees’ Compensation Act and the Factories Act.

Why this matters

Outsourcing does not dilute safety responsibilities. Employers in Nigeria, whether direct or indirect, must ensure protective equipment, safe working conditions, and compliance with statutory reporting. Neglecting these obligations can result in joint liability and damages, even where injuries are temporary.

Key themes

Several cross-cutting themes emerge from these decisions.

“Substance + process” (always both)

The NICN will accept legitimate business reasons – redundancy, restructuring, fixed-term expiries – but will still penalise procedural missteps (such as notice pay) and consent defects (such as coerced status conversions). Employers should not assume that commercial justifications alone will carry the day; execution must be immaculate.

Contract is king and courts will enforce it

From currency-of-pay clauses to accrued leave and gratuity, the NICN takes a strict contractualist approach: agreed terms are enforceable, and unilateral deviations (including FX-driven changes) attract liability. This resonates with common-law predictability while cautioning that operational convenience (or macroeconomic pressure) will not override clear drafting.

Rights with real teeth

The NICN treats certain protections (annual leave, fair treatment in restructurings, proper succession of benefits) as substantive rights, not mere HR policy. The court’s insistence that employers proactively ensure leave is taken, and that “next-of-kin” does not trump legal heirs, are examples of rights being operationalised in ways that directly affect payroll, policy, and benefits administration.

The fixed-term contract exception

While the NICN has consistently required employers to justify terminations, especially in permanent employment and in line with international labour standards, it appears that this principle may not apply strictly to fixed-term contracts. In such cases, if the agreement permits termination on notice (or by other stipulated

means), the employer may end the contract without stating a reason, and this will not amount to unfair labour practice. This creates a narrow but important carve-out from the “no-reason-no-termination” trend.

Shared duty, shared liability

The NICN treats workplace safety as a non-delegable duty, meaning that principal employers and contractors alike can be held jointly liable where both exercise control over work conditions. Subcontracting or outsourcing does not insulate from liability; all statutory safety, equipment and injury-reporting obligations apply across the employment chain. For employers with multi-tier labour structures, compliance must cascade through all operational layers.

Practical Takeaways for Multinational Employers and Counsel in Nigeria

Draft with precision and prepare for stress scenarios

Contracts and HR policies should be watertight and tailored to Nigerian legal realities. Where salaries are denominated in foreign currency, include clear foreign exchange (FX) contingency clauses that specify conversion rates, fallback payment mechanisms, or indexed values in the event of currency shortages. For termination provisions, set out notice periods in unambiguous terms and link them to practical payment timelines. For leave entitlements, expressly state the employer’s obligation to schedule and enforce leave – this is not just an administrative task, it is a legal duty.

Review “conversion” exercises and fixed-term contracts carefully

Any change from permanent to contract status must be supported by genuine and uncoerced consent. Economic pressure or implied threats can render employee “agreement” invalid. Similarly, for fixed-term contracts, ensure that expiry and renewal processes align with notice requirements and that contractual language leaves no ambiguity on renewal rights or termination triggers.

Treat leave as a legal duty, not as a discretionary benefit

Nigerian law places the onus on employers to ensure that staff take their statutory leave, regardless of whether an employee requests it. This means actively tracking leave balances, scheduling rest periods and enforcing compliance. Relying on a “use it or lose it” approach common in other jurisdictions may breach Nigerian law.

Align HR beneficiary records with succession law

Naming someone as “next-of-kin” in company records is not the same as legally designating them as a beneficiary. In Nigeria, death benefits and pension payouts must follow statutory succession rules, typically requiring probate or letters of administration. HR teams should ensure that benefit designation forms are harmonised with legal succession processes to prevent disputes and payment delays.

Keep meticulous records – everything matters in disputes

Contemporaneous documentation often determines the outcome of litigation or arbitration. Maintain clear records of employee consent, notice issuance, payment receipts, leave schedules and policy implementation. In disputes before the NICN, a lack of proper documentation can be fatal to a defence, regardless of the substantive merits.

Extend safety compliance to all categories of workers

Occupational health and safety obligations apply broadly in Nigeria, including in multi-tier labour arrangements where contractors, subcontractors or agency workers are involved. Employers must ensure that safety policies, training programmes and protective equipment are implemented and monitored across all tiers of labour supply, as duty of care is shared between principal employers and intermediaries.

NORWAY



Trends and Developments

Contributed by:

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and Thea Marie Karlsen

Ræder Bing Advokatfirma AS

Ræder Bing Advokatfirma AS is a prominent law firm with a robust team of experts specialising in labour law. It is located in the centre of Oslo and serves a diverse clientele, including Norwegian and international businesses, municipalities and government entities. The labour law team includes three partners, two managing associates, two associates and three junior associates. The team handles all aspects of labour law, such as restructuring, downsizing, cases related to sick leave, and represents trade unions, employers

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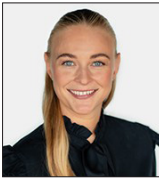
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Introduction

Norwegian employment law and judgments from both the Supreme Court and Courts of Appeal have evolved on specific topics during the last year. The legislative changes were imposed by the Norwegian Labour Party's policies through the Norwegian government, while judgments from the courts are of course based on individual cases.

The main trends in the labour market and workplaces continue after the pandemic years, focusing on the following:

- working environment, claims for harassment and whistle-blowing cases;
- challenges connected to a continuous rise in sick leave rates;
- possibility of remote work;
- use of AI in the workplace; and
- challenges connected to employees from different generations.

The main legal changes seen this year relate to:

- psychosocial working environment;
- classification of independent contractors versus employees; and
- company-specific age limits.

Legal Acts

New legal requirements regarding working environment

The Norwegian Parliament recently adopted amendments to Section 4-3 of the Working Environment Act regarding requirements for the psychosocial working environment. The background for these changes is a report from the Norwegian Labour Inspection Authority published in 2023. The report revealed, among other points, that the Working Environment Act's regulation of the psychosocial working environment is fragmented and difficult to understand. This highlighted the need for more systematic and targeted prevention, as well as increased competence among HSE personnel. Psychosocial conditions have a major impact on health and sickness absence, while the prioritisation of the topic varies between industries. The report also highlighted growing international attention regarding psychosocial requirements within organisations, and

emphasised the need for clearer regulatory requirements, as well as improved training for managers and elected representatives.

The changes involve a linguistic addition and definition of various working environment factors of the Section's first and second paragraphs. The list is not exhaustive, but specifies the following factors that the employer must be more attentive to.

- Unclear or conflicting demands and expectations of work performance.
- Emotional demands and strains when working with people.
- Workload and time stress that means there is an imbalance between the work to be done and the time available.
- Support and help to conduct the work.

The amendment is not intended as a substantive change to current law, but rather to clarify the requirements for the psychosocial working environment. Nevertheless, there is reason to question whether the changes entail an increased/expanded responsibility for employers.

Unions have generally been positive about the changes, while employers have expressed concern that responsibility is being extended in a way that may have unintended consequences. Several consultation responses pointed out that the new criteria appear subjective and unsuitable as legal standards, which in turn can create a lack of clarity about what is actually required of the parties in a working environment.

Company-specific age limits will be abolished from 1 January 2026

The age limit, as in when the employer can terminate the employment relationship without any other cause than age, is by law 72 years. Until the end of this year, Norwegian law has allowed company-specific age limits to be set at 70 years.

From 1 January 2026, company-specific age limit will be abolished. As a result, all employees will have the right to stay in their positions and work until the age of 72. Dismissals due to age given before the age of 72 will be considered unjustified and illegal, unless

the employee belongs to a profession where specific health and safety requirements apply.

Employers who practise company-specific age limits today may continue to apply these until 31 May 2025. After this date, employees are protected against dismissals due to age until they are 72 years old.

New measures to combat workplace crime from 1 July 2025

As of 1 July 2025, the Norwegian Labour Inspection Authority has been granted expanded tools to uncover and combat workplace crime, following amendments to Chapter 18 of the Working Environment Act. These changes enable the authority to secure evidence during inspections, impose significant fines on individuals and gather information from third parties. Additionally, the Labour Inspection Authority can now request police assistance during inspections.

- Expanded authority to impose fines – The Labour Inspection Authority can impose fines directly during inspections, provided there are clear and observable violations. The statute of limitations for imposing such fines has been extended from two to five years.
- Fines for individuals – Starting 1 July 2025, the Labour Inspection Authority can impose fines on individuals who effectively lead the business, such as owners or managers, if they have intentionally or grossly negligently violated provisions of the Working Environment Act. The fine can amount to up to 25 times the basic amount in the National Insurance Scheme (NOK3,254,000).
- Police assistance requirement – The Labour Inspection Authority can request police assistance in conducting inspections and enforcing decisions, without needing to file a police report or request a temporary injunction.
- Securing evidence during inspections – The Labour Inspection Authority has been granted expanded powers to secure evidence without the consent of the object of the inspection, by obtaining a court order. Evidence can be secured if there is a likelihood of violations of the Working Environment Act, and it must be necessary and not disproportionately intrusive.

- Expanded right to use physical force – Inspectors can enter workplaces using physical force, including cutting locks or calling a locksmith.
- Gathering information from third parties – The Labour Inspection Authority can gather necessary information from third parties, such as suppliers or customers, when deemed proportionate. This helps ensure the case is properly informed.

The Labour Inspection Authority has observed that workplace crime is evolving with more professional and complex methods, harming employees and businesses. The amendments aim to address serious violations and protect employees.

Amendments to the National Insurance Act

In June 2025, the Norwegian Parliament adopted several amendments to Chapter 13 of the National Insurance Act concerning occupational injury coverage. The new amendments have not yet come into force. Norwegian legislation is based on a dual-track system for occupational injury coverage, consisting of special benefits under the National Insurance Act for occupational injuries and diseases, and a mandatory occupational injury insurance scheme requiring employers to insure their employees. Certain occupational diseases may be equated with occupational injuries, entitling affected individuals to both social security benefits and compensation. However, this requires that the specific disease is included in the lists of occupational diseases.

Key points of the legislative amendments

- Safety valve – A safety valve has been introduced to ensure flexibility in the occupational disease regulations in response to a constantly evolving labour market. This valve is linked to the provisions of the National Insurance Act and aims to mitigate the rigidity of the listing system. Previously, only the Occupational Injury Insurance Act including a safety valve qualified, but now a common valve has been established for both frameworks, contributing to harmonisation and simplification.
- Advisory committee – An advisory committee on occupational diseases will be established to regularly assess which diseases should be included on the list. Appointed by the Ministry, the committee will work closely with the medical community

to ensure a sound scientific basis for proposed changes. It is suggested that employees and employer organisations participate in the committee, providing social partners with greater opportunity to take an active role in the field of occupational injuries.

- Criteria for new diseases – Knowledge-based criteria for new diseases to be included on the list will be maintained. Diseases that no longer meet the criteria will be removed. The Ministry is granted the authority to issue regulations with rules for adding new diseases.
- Professional guidance – A professional guidance document will be prepared for the use of the new occupational disease list, ensuring effective investigations, faster case processing, and improved professional quality in decision-making.
- Electronic reporting – Employers and other obligated reporters must submit injury reports electronically to the Norwegian Labour and Welfare Administration, with exceptions where electronic reporting is not feasible.

These amendments aim to provide greater flexibility and update the regulatory framework in line with today's labour market and societal developments.

Norwegian wage conditions to be adopted on all ships in domestic traffic

With effect from 1 July 2025, the Norwegian Parliament has changed the scope of the General Application of Collective Bargaining Agreements Act to include ships engaged in so-called domestic traffic, independent of flag state. This is to facilitate the inclusion of Norwegian wage conditions on board ships that transport goods between Norwegian and European ports – and also those that take cargoes between Norwegian ports (cabotage). In order for this to have an effect, the trade unions must petition for general application; they have not yet put forward such petition.

In addition, with effect from 1 January 2026, it has been decided that licensees operating on the Norwegian continental shelf must ensure that employees on board ships that provide services to them have Norwegian wage conditions. The government must put

in place regulations to regulate the implementation of this in more detail.

If a new Norwegian government is formed from September 2025, it is believed that all this will be reversed. This is because full coverage of Collective Bargaining Agreements in this branch already exists, and the changes would inflict the principle of leaving questions on wages to the Unions and employers' associations.

Case Law

Classification of independent contractors versus employees

Following the 2024 amendment regarding the definition of “employee” of the Working Environment Act, including the switch regarding laying the burden of proof on the company engaging the worker, there have been notable cases drawing the distinction between contractors and employees.

Firstly, the Borgarting Court of Appeal's judgment on 27 January 2025 in the case of *Chorus of Soloist Singers* acknowledged the soloist's freedom to choose which assignment she would accept, and her influence on both the chorus's activities and her own general terms and conditions.

Overall, the Court of Appeal found that the singer's freedom and influence meant that the relationship deviated from the typical relationship of dependence and subordination in an employee relationship. On this basis, the court found that there was no need for the protective rules of the Working Environment Act. Thus, the contractor's contract prevailed.

Appeal to the Supreme Court was not permitted. The judgment is therefore final.

Secondly, Norway has had its first – and important in principle – case (the *Wolt Couriers* case) regarding platform work; matching supply and demand for paid labour with the aid of a digital platform/algorithm.

Even though the EU's Platform Work Directive entered into force on 1 December 2024 (and is EEA-relevant), the member states must implement the directive in their national legislation within two years. The core question has been whether platform workers should

be considered employees or contractors. The aim is, among other things, to improve the working conditions for people who perform platform work and to promote transparency and accountability in the way algorithms manage such work.

In the original Commission proposal, criteria were proposed that would determine whether an employment relationship existed, based on the extent to which the digital platform controlled the work. However, this was not adopted, and the classification is largely left to regulation in the individual member states. Due to the above-mentioned new Norwegian definition of “employee” and the switch regarding laying the burden of proof on the contracting company (platform), the presumption rule of the Directive might therefore not have much impact in Norway.

In particular, in *WoltCouriers*, the District Court of Oslo pronounced on 4 April 2025 that Wolt couriers were entitled to permanent employment. The judgment is the first to consider management via algorithms in working conditions in Norway. For the court, it was an important factor that the applications in Wolt’s platform work with the help of algorithms, which, among other things (according to the court’s opinion), distribute the assignments, and detail and monitor the implementation. The platform thus exercised a considerable degree of management and control. This again led to the need of protection from the Act. The case has been appealed.

The two cases point out that companies must have a conscious attitude towards the organisation of their activities, especially when it comes to the affiliation of labour.

Supreme Court judgment ruling regarding economic compensation when an independent contractor is considered to be an employee

On 20 December 2024 the Supreme Court ruled in a decision regarding the economic consequences when an independent contractor was considered to be an employee (the *Recovery Case*). The question was whether an independent contractor should be compensated for overtime work and holiday pay when defined as an employee.

The Supreme Court concluded that the mandatory rules of the Norwegian Employment Act regarding working time and pay should be followed, unless the parties had a valid agreement saying otherwise. As their contract did not reflect the real situation, working time exceeding the normal working hours as defined in the Act should be seen as overtime work with overtime pay. If some of this pay by proof had already been paid out, there should not be double compensation. The Supreme Court also ruled that the employee was entitled to full holiday pay and that this claim was not outdated.

Supreme Court ruling clarifies occupational injury coverage during breaks when working remotely

On 2 September 2024, the Supreme Court delivered a judgment that provides important practical clarification of the scope of occupational injury coverage when an employee is working remotely. The judgment states that employees have weaker protection against occupational injuries when working remotely rather than at their office (ordinary place of work).

The case concerned a doctor who, after having worked more than 11 hours on a patient admission on Saturday, worked remotely on Sunday morning, catching up on medical literature related to the patient admission. Before her scheduled return to the hospital, she took a meal break in her private garden. On her way out to the garden, the doctor stumbled and sustained permanent injuries to her foot.

According to the relevant legislation, occupational injury only applies to injuries sustained while “the employee is at work at the workplace during working hours”. When work is performed remotely, a close connection between the work and the accident is required, and this requirement is interpreted strictly. For breaks at the regular workplace, the requirements are less stringent. For breaks during remote work, the majority of the Supreme Court found that this does not apply to remote work due to the private nature of the home and the blurred boundaries between work and private life.

The majority also found no support for a broader interpretation of the connection requirement in case law, preparatory works or purpose-based considerations.

Therefore, three out of five judges concluded that the doctor's injury during a break while working from home was not covered by the statutory requirement that the injury must occur while "the employee is at work at the workplace during working hours".

Given the widespread use of remote work in recent years, this is a judgment that employers should inform employees about when discussing remote work – employees have weaker protection against occupational injuries when working remotely. In this way, employees can make an informed choice and consider whether they need to obtain additional protection – for example, supplementary insurance.

Supreme Court ruling clarifies the boundaries of "occupational accident" under the Occupational Injury Insurance Act

On 29 October 2024, the Supreme Court delivered a judgment that provides clarification of what constitutes a "work accident" under the Occupational Injury Insurance Act. The judgment establishes that falling, while in the workplace, caused by illness or fainting is not covered by occupational injury insurance, unless there is an external influence or an increased risk connected to the employment situation.

The central question was whether fainting at work, followed by injury in the subsequent fall, should be regarded as a "work accident" under the Occupational Injury Insurance Act. The majority – four out of five judges – confirmed that the concept of a work accident under the Act fundamentally requires a "sudden and external event", meaning the injury must be caused by something external to the employee's internal condition. The same applies to falls on a flat surface without any external influencing factor. Furthermore, the cause of the injury must have a connection to employment or risk factors present in the workplace.

The judgment provides clarification of the requirements for obtaining occupational injury insurance coverage in this area. Injuries resulting from illness or indisposition leading to a fall in the workplace will, as a general rule, not be covered unless the fall is caused by external influence (for example, slipping on something, tripping over an object), or if the employment entails a particular risk for the specific type of injury. This applies even if the National Insurance (NAV) has approved the injury under the National Insurance Act.

The decision also demonstrates that the concept of "work accident" under the Occupational Injury Insurance Act and the National Insurance Act is currently interpreted differently, which may result in varying coverage for the same incident.

PHILIPPINES



Law and Practice

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Villaraza & Angangco (V&A Law) was established in 1980, and is a decorated full-service law firm with recognised expertise in the areas of labour and employment, litigation and dispute resolution, corporate and commercial law, and intellectual property law. Headed by legal luminaries and practitioners who are deemed experts in their respective fields, its approximately 80 lawyers and 100 highly trained non-legal staff capably provide the firm's foreign and domestic clients with comprehensive, multi-layered, innovative, and practical solutions that truly deliver results.

With decades of experience serving at the forefront of the evolving landscape of Philippine law, Villaraza & Angangco continues to offer professional services of the highest calibre. V&A Law's Labour & Employment Department serves its clients in the full spectrum of Philippine labour and employment law at the highest legal standards. It is highly decorated for its timely, accurate, and comprehensive legal advice, be it regulatory compliance, labour disputes, or management of labour relations.

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1. Employment Terms

1.1 Employee Status

Philippine law does not classify employees by whether they are blue or white-collar workers. However, it is generally understood that blue-collar workers are those engaged in manual labour or skilled trades, typically earning daily wages, such as construction workers and factory employees. In contrast, white-collar workers are typically involved in professional, managerial, or administrative roles, receiving a monthly salary, like office staff and managers.

Instead, Philippine law provides for the following classifications of employees, based on the nature and duration of the work performed:

- regular employees: those who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer;
- casual employees: those who perform work that is merely incidental to the principal business of the employer, where such work is for a definite period made known to the employee at the time of engagement;
- project employees: those whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee;
- seasonal employees: those who work or perform services which are seasonal in nature, and the employment is for the duration of the season;
- fixed-term employees: those hired for a specific period, with employment ending on a predetermined date; and
- probationary employees: those employed on a trial basis, which generally lasts up to six months, to determine their qualification for regular employment.

1.2 Employment Contracts

Types of Employment Contracts

Similar to the classification of employees as provided above, employment contracts are typically structured based on the nature and duration of the work. These contracts may be construed as indefinite (eg, regular

employment) or definite (eg, fixed-term employment and project-based employment), though this classification is not generally provided for under Philippine law.

Formal Requirements of Employment Contracts

Philippine law does not mandate that employment contracts be in writing for their validity, nor does it impose specific formal requirements. However, it is highly recommended to have a written contract to provide evidence of the terms and conditions agreed upon by the parties.

Nevertheless, it must be noted that an employee's status does not depend on the designation or the terms outlined in an employment contract. Instead, an employee's status is defined by the actual nature of the work performed. As Article 295 of the Philippine Labour Code emphasises, this determination applies regardless of any written or oral agreements to the contrary.

Further, in a recent case entitled *Aragones v Alltech Biotechnology Corporation*, G.R. No. 251736, 2 April 2025, the Philippine Supreme Court held that an employment relationship begins as soon as the employee has accepted the job offer from an employer. According to the Supreme Court, as a consensual contract, an employment contract is perfected as soon as the employee and the employer have agreed upon the terms and conditions of the employment contract, which is typically manifested by the employee's acceptance of the job offer. From that moment, an employment relationship is created, even if it has been agreed that the employee would commence actual work on a later date.

1.3 Working Hours

Maximum Working Hours

Under Article 83 of the Philippine Labour Code, the standard maximum working hours are eight hours per day, six days a week, totalling 48 hours per week. In addition, Article 91 of the Labour Code entitles the employee to a rest period of not less than 24 consecutive hours after every six consecutive normal workdays.

Flexible Arrangements

Flexible work arrangements are valid, provided that they are documented and mutually agreed upon by the employer and the employee. Prior to implementing any flexible work arrangement, the employer must notify the Department of Labour and Employment (DOLE) through the regional office that has jurisdiction over the workplace, in accordance with the Department of Labour and Employment Advisory No 002-09. The types of flexible work arrangements are as follows:

- compressed workweek: where the workweek is shortened to less than six days, but the total work hours remain at 48 hours per week;
- reduction of workdays: where the number of workdays per week is reduced, which should not exceed six months;
- rotation of workers: where employees are rotated or alternated within the workweek;
- forced leave: where employees are required to go on leave, using their leave credits if available;
- broken-time schedule: where work hours are not continuous but total work hours within the day or week remain unchanged; and
- flexi-holidays schedule: where employees agree to take holidays on other days without reducing existing benefits.

Part-Time Contracts

Despite part-time employment being practised in the Philippines, there is no specific law governing part-time contracts. Thus, part-time employees are entitled to the same statutory benefits as full-time employees, but these benefits are prorated based on the number of hours worked relative to a full-time employee, as applicable.

Overtime Regulations

Pursuant to Article 87 of the Philippine Labour Code, work performed beyond eight hours on regular workdays must be compensated at a premium rate of at least 25%, in addition to the employee's regular wage. On the other hand, work performed beyond eight hours on a holiday or rest day shall be paid an additional compensation of 30%.

In October 2024, the Philippine Supreme Court held that overtime pay must be paid for as long as the employee is made to wait for work beyond eight hours, reiterating the rule that even "waiting time" is considered part of the employee's work hours. In the case of *Cambila, Jr. et al. v Seabren Security Agency, et al.*, G.R. No 261716, 21 October 2024, the employer claimed that the employees are not entitled to overtime pay as they were supposedly reporting for only eight hours of work, with the first four hours served in the morning and the remaining four hours later in the evening. However, according to the Supreme Court, the "break" between the shifts of the employees in that case cannot be considered as non-compensable since the employees cannot leave the employer's premises and use the said "break" for their own personal interests. Thus, the Supreme Court held that the "break" must be construed as "waiting time" for the employees and, thus, part of their work hours. Accordingly, if the employees had been working for more than eight hours (including their "break" or "waiting time"), then they must be paid overtime.

1.4 Compensation

Minimum Wage Requirements

The minimum wage in the Philippines varies by region and is determined by the Regional Tripartite Wages and Productivity Boards (RTWPB). Each region sets its minimum wage rates based on factors such as the cost of living, prevailing wage rates, and the capacity of employers to pay.

13th-Month Pay

Under Presidential Decree No 851, 13th-month pay is mandatory under Philippine law. It is equivalent to one-twelfth of an employee's total basic salary within a calendar year and must be paid no later than 24 December each year. All rank-and-file employees who have worked for at least one month during the calendar year are entitled to receive the 13th-month pay, regardless of the nature of their employment.

Bonuses

Bonuses, apart from the 13th-month pay, are generally discretionary unless they are stipulated in the employment contract, company policy, or a collective bargaining agreement (CBA). Employers may offer performance-based bonuses, Christmas bonuses, or

other forms of incentives, but these are not statutorily required.

Minimal Government Intervention

Beyond establishing regional minimum wage rates, the government generally permits employers and employees to negotiate compensation levels and other employment terms, which are typically embodied in a CBA.

1.5 Other Employment Terms

Holiday and Holiday Pay

Under Article 95 of the Philippine Labour Code, regular employees who have rendered at least one year of service are entitled to a Service Incentive Leave (SIL) of five days with pay each year. This leave can be used either for holidays or periods of illness. If an employee does not use the SIL within the year, it is convertible to cash at the end of the year.

Required Leaves (Including Pay)

Maternity leave

Under Republic Act No 11210, known as the “Expanded Maternity Leave Law”, all female employees are entitled to 105 days of maternity leave with full pay. This benefit is provided regardless of the employee’s civil status, employment status, or the legitimacy of the child. An additional 15 days of leave with full pay is granted if the female employee qualifies as a solo parent under Republic Act No 8972, or the “Solo Parents’ Welfare Act of 2000”. In the case of miscarriage or emergency termination of pregnancy, the employee is entitled to 60 days of leave with full pay. If the employee wishes, she can extend her maternity leave by an additional 30 days without pay.

Paternity leave

Republic Act No 8187, or the “Paternity Leave Act of 1996”, provides that all married male employees in the private sector are entitled to paternity leave for the first four deliveries of their legitimate spouse with whom they are cohabiting. The leave period is seven days with full pay, which is meant to allow the husband to support his wife during her recovery and in caring for the newborn child.

Parental leave for solo parents

Solo parents, as defined under Republic Act No. 8972, or the “Solo Parents’ Welfare Act”, are entitled to seven days of parental leave with full pay each year. This leave is granted to enable solo parents to perform parental duties and responsibilities where physical presence is required.

Leave for victims of violence against women and their children

Republic Act No 9262, or the “Anti-Violence Against Women and Their Children Act of 2004”, grants female employees who are victims of violence up to ten days of leave with full pay.

Special leave for women

Under Republic Act No 9710 or the “Magna Carta of Women”, female employees who undergo surgery due to gynaecological disorders are entitled to a special leave benefit of two months with full pay. This benefit applies to those who have rendered at least six months of continuous aggregate service in the 12 months preceding surgery. The special leave is not cumulative and cannot be converted into cash.

These leaves are statutory entitlements in the Philippines and are designed to support employees during significant life events, ensuring they receive the necessary time off with the corresponding pay to address personal and family matters.

Limitations on Confidentiality and Non-Disparagement Clauses

Confidentiality clauses

Consistent with the principle of autonomy of contracts under Article 1306 of the Philippine Civil Code, employers may include confidentiality provisions in employment contracts to protect sensitive business information that employees may encounter during their tenure, provided that they are not contrary to public policy. These clauses can be designed to extend beyond the period of employment, effectively prohibiting the disclosure of proprietary information, including trade secrets, client lists, financial data, and any other information that, if disclosed, could harm the business.

Non-disparagement clauses

Non-disparagement clauses are similarly enforceable and allow employers to prevent employees from making statements or taking actions that could damage the company's reputation. These clauses are typically broad, covering any conduct that could negatively impact the employer's business or standing in the community. Although non-disparagement clauses can be enforceable, they must be weighed against the employee's rights, including the right to freedom of speech and to file genuine complaints or grievances. Penalties for violating these clauses, often imposed as liquidated damages, should be reasonable and may be reviewed by a court if deemed excessive.

Employee Liability and Limitations

According to Articles 114 and 115 of the Philippine Labour Code and DOLE Labor Advisory No 11, series of 2014, employers may require deposits from employees, from which deductions can be made to cover losses or damages to tools, materials, or equipment, provided that the following conditions are observed:

- the employee concerned is clearly shown to be responsible for the loss or damage;
- the employee is given a reasonable opportunity to show reason why deductions should not be made;
- the amount of such deduction is fair and reasonable and shall not exceed the actual loss or damage; and
- the deduction from the employee's wages does not exceed 20% of the employee's wages in a week.

2. Restrictive Covenants

2.1 Non-Competes

In the Philippines, non-compete clauses are generally enforceable, provided that certain conditions are present, as provided for in case law:

- there are limitations in terms of time, place and trade, thereby preventing an undue restriction on the employee's right to work and earn a livelihood; and
- such limitations must not be greater than is necessary to afford a fair and reasonable protection to the employer.

Philippine law does not explicitly require independent consideration for non-compete clauses because clauses are typically embodied in employment contracts.

However, when restrictive covenants, such as non-compete clauses, are written into mutual separation agreements, a separation package is provided in exchange for certain waivers or agreements, which may include non-compete clauses. Thus, the separation payment acts as consideration for the employee's compliance with post-employment obligations, including non-compete and non-solicitation clauses, among others.

2.2 Non-Solicits

Similar to non-compete clauses, non-solicitation clauses, which prevent former employees from soliciting the employer's customers, are also enforceable, provided that they contain reasonable limitations as to time, trade, and place, and that such limitations are not greater than is necessary to afford a fair and reasonable protection to the employer.

3. Data Privacy

3.1 Data Privacy Law and Employment

Data privacy in the employment sphere is governed primarily by Republic Act No 10173, or the "Data Privacy Act of 2012".

Under the Act, employees are recognised as data subjects, meaning that their personal, sensitive, and privileged information is subject to protection under the law. This includes information that can directly or indirectly identify an employee, such as their name, contact details, health records, and government-issued identification numbers.

The personal information of the employee may only be processed if any of the criteria under Section 12 of the Act are satisfied, such as when the employee has given their consent, or when the processing of such information is necessary for the legitimate business interests of the employer.

The processing of sensitive personal information (eg, health information and government-issued identifiers like social security numbers) and privileged information (eg, human resources investigations or psychological evaluations) is likewise prohibited when any of the instances under Section 13 of the Act are present.

Moreover, Section 20 requires employers to adopt organisational, physical, and technical measures to protect personal information from risks such as unauthorised access, breaches, or destruction, including the implementation of secure communication channels, proper encryption, and data protection protocols for mobile work settings.

4. Foreign Workers

4.1 Limitations on Foreign Workers

As a matter of national policy and under Article 40 of the Philippine Labour Code, the employment of foreign nationals is restricted when there are competent, able, and willing Filipino workers available to perform the work desired.

Section 40 of Republic Act No 7916, or the “Special Economic Zone Act”, provides that the employment of foreign nationals hired by Ecozone enterprises in a supervisory, technical or advisory capacity shall not exceed 5% of its workforce without the express authorisation of the Secretary of Labour and Employment.

The employment of foreign workers in nationalised and partially nationalised industries, where foreign equity participation is limited to 40%, is also regulated by the Department of Justice (DOJ).

For the practice of professions, Article XII, Section 14 of the 1987 Philippine Constitution provides that the practice of all professions in the Philippines shall be limited to Filipino citizens, unless specified otherwise by law. Generally, only foreign nationals from countries with reciprocity agreements are eligible to take licensure exams and practice professions, such as engineering and medicine. However, the practice of law remains reserved exclusively for Filipino citizens.

4.2 Registration Requirements for Foreign Workers Permits

Under Article 40 of the Philippine Labour Code and the newly issued DOLE Department Order No 248, series of 2025 (“D.O. No 248-25”), employers intending to hire foreign nationals must prove through a Labour Market Test (LMT) that no qualified Filipino is available for the position.

Foreign nationals who intend to work in the Philippines must secure an Alien Employment Permit (AEP) from the DOLE. The AEP is only valid for the position and employer specified in the application. In case of transfer to another position or company, a new application must be submitted. Notably, under the new D.O. No 248-25, an application for an AEP may be filed and processed even while the foreign national intended to be hired is still outside the country, provided that no AEP shall be released unless the foreign national has entered the country with the appropriate pre-arranged employment visa or 9 (G) or working visa presented to the DOLE Regional Office. The other requirements and the process for the application of the AEP are found in D.O. No 248-25, DOLE Labour Advisory No 16, series of 2021, and the latest DOLE Citizen’s Charter (1st Edition, 2025).

Furthermore, foreign workers in certain regulated professions (eg, doctors, engineers) must also secure a Special Temporary Permit (STP) from the Professional Regulation Commission (PRC).

For short-term services, engagements, and specialised projects, foreign nationals intending to work in the Philippines for six months or less must apply for a Special Work Permit (SWP) with the Bureau of Immigration (BI), under BI Order No JHM-2019-008.

Nevertheless, certain foreign nationals are exempt from the AEP requirement, such as diplomatic personnel, refugees, and stateless persons recognised by the DOJ, as well as those holding key positions in corporations without direct involvement in management.

Under the Joint Memorandum Circular No 1, series of 2019, nationalised and partially nationalised indus-

tries, where foreign equity participation is limited to a maximum of 40%, are required to apply for an Authority to Employ Alien (AEA) to be issued by the DOJ.

Moreover, enterprises engaged in mining operations are also required to obtain an Authority to Hire Foreign National (AHFN) to be issued by the Department of Environment and Natural Resources (DENR) for the employment of foreign nationals engaged in mining operations.

Visas

Under Section 9 (g) of Commonwealth Act No 613, or the “Philippine Immigration Act of 1940”, foreign nationals who are proceeding to the Philippines to engage in any lawful occupation, whether for wages or salary or other forms of compensation, must secure the pre-arranged employment visa or 9G visa, following BI Order No JHM-2021-0004.

For enterprises registered with the Philippine Economic Zone Authority (PEZA), foreign nationals employed in executive positions, as well as those employed in supervisory, technical and advisory positions (including their qualified dependents under 21 years of age) must secure a PEZA visa, in accordance with BI Order No JHM-2021-010.

Tax Identification Number

All applications for work permits and working visas must be supported by a Tax Identification Number (TIN). The procedure and application requirements are outlined in the Bureau of Internal Revenue (BIR) Memorandum Order No 28-2019.

5. New Work

5.1 Mobile Work

Mobile work, or work from an alternative workplace with the use of telecommunications and/or computer technologies, is governed by Republic Act No 11165, or the “Telecommuting Act”. Under Section 4 of the Act, the employer may offer a telecommuting program to its employees on a voluntary basis, and upon such terms and conditions as they may mutually agree upon.

Section 6 of the Telecommuting Act mandates that employers ensure the protection of data processed and used by telecommuting employees. This requires employers to take appropriate measures, such as implementing secure data storage systems and encryption protocols.

Furthermore, employers are responsible for informing telecommuting employees about relevant data protection laws, particularly Republic Act No 10173 or the “Data Privacy Act of 2012”, which applies in a supplementary capacity.

While the Telecommuting Act does not explicitly address occupational safety and health, Section 4 (a) of Republic Act No 11058 or the “Occupational Safety and Health Standards Act”, states that employers are responsible for ensuring that workers are provided with a workplace that is free from hazards that may cause illness, injury, or death. This responsibility applies regardless of whether the employee works on-site or remotely.

Under Section 5 of the Act, telecommuting employees are entitled to the same treatment available to on-site employees, including the same social security benefits, such as Social Security System (SSS), Pag-IBIG, and PhilHealth, as well as the minimum labour standards set by law, such as compensable work hours, minimum number of work hours, overtime, rest days, and entitlement to leave benefits.

5.2 Sabbaticals

Sabbatical leave in the Philippines is generally left to the discretion of the employer and is governed by company policy or CBA. However, employers must ensure that such a policy does not override the minimum statutory leave entitlements, such as SIL under Article 95 of the Philippine Labour Code, or parental leaves, which are separate entitlements.

5.3 Other New Manifestations

The concept of “new work” is evolving in the Philippines, particularly with the rise of flexible work arrangements under DOLE Advisory No 002-09, as discussed in 1.3 Working Hours, and telecommuting, as discussed in 5.1 Mobile Work.

Although specific laws and policies have not yet addressed various “new work” arrangements, businesses continue to explore and adopt modern approaches, such as technology integration and desk-sharing. These initiatives demonstrate a broader trend toward flexibility, efficiency, and the optimal use of workplace resources.

6. Collective Relations

6.1 Unions

Under Section 1, Book V of the Rules to Implement the Philippine Labour Code, as amended by DOLE Department Order No 40-03, series of 2003 (“D.O. No 40-03”), a union is technically defined as a labour organisation in the private sector organised for collective bargaining and for other legitimate purposes. This term is often used interchangeably with “labour organisation”, which refers to any union or association of employees in the private sector which exists in whole or in part for the purpose of collective bargaining, mutual aid, interest, co-operation, protection, or other lawful purposes. Thus, there are two basic purposes of a union or labour organisation, namely:

- for collective bargaining with respect to the terms and conditions of employment; and
- for dealing with the employer.

A legitimate labour organisation refers to any labour organisation in the private sector registered or reported with the DOLE, under the Philippine Labour Code and its Implementing Rules, including a branch or local thereof. Once registered, the union, now being a “legitimate labour organisation” may act as the representative of its members for collective bargaining (without binding non-members of the union) and may be certified as the exclusive representative of all the employees in an appropriate collective bargaining unit for purposes of collective bargaining, pursuant to Article 242 of the Philippine Labour Code.

6.2 Employee Representative Bodies

Role

A legitimate labour union that is duly recognised or certified as the sole and exclusive bargaining representative or agent (SEBA) shall represent all the employees

in a bargaining unit in the negotiation process with the employer during the subsistence of the CBA. The relationship between a union and its members can be understood as one of principal and agent, where the union acts as the agent, and the members are the principals. This relationship is fiduciary in nature, meaning that the union, as the agent, must act in the best interests of its members. The union’s role is to represent its members to ensure that they receive fair wages and favourable working conditions.

Institution of the Representative Body

The modes to determine the SEBA depend on whether the establishment is unorganised or organised (ie, one without a certified SEBA, and one with a certified SEBA, respectively), and whether or not there is more than one legitimate labour organisation.

Request for SEBA certification

This mode is used when there is no competing union, and majority support from employees can be confirmed, specifically in unorganised establishments with only one legitimate labour union, the process for which is outlined under Rule VII of the DOLE Department Order No 40-I-15, series of 2015.

Thus, organised establishments and unorganised establishments with more than one legitimate labour organisation will necessarily involve the conduct of a certification election.

Certification election/consent election

Under the Rules, a “certification election” refers to the process of determining through secret ballot the SEBA of the employees in an appropriate bargaining unit for purposes of collective bargaining or negotiations, which is conducted under the control and supervision of the DOLE.

Conversely, a “consent election” likewise involves the same process of determining through secret ballot the SEBA, but is voluntarily agreed upon by the parties, with or without the intervention of the DOLE.

The conduct of certification elections for unorganised establishments is governed by Article 269, whereas organised establishments are governed under Article 268 of the Philippine Labour Code.

6.3 Collective Bargaining Agreements

A CBA is a contract negotiated between an employer and the duly recognised or certified exclusive bargaining representative of the workers. This agreement covers matters such as wages, working hours, and other employment terms and conditions within the appropriate bargaining unit, and mandatory provisions for grievance and arbitration mechanisms. The CBA is executed by both the employer and SEBA.

Before entering into a collective bargaining negotiation, the following conditions must be met:

- there must be an employer-employee relationship between the employer and the members of the bargaining unit;
- the bargaining agent must have the majority support of the bargaining unit and be lawfully recognised; and
- the proposed agreement must align with legal standards.

The CBA, when finalised, becomes legally binding during its entire duration and must be followed in good faith by both parties. It is important to note that wage negotiations within the CBA are separate and distinct from legally mandated wage increases, provided that any reductions must not fall below the minimum standards.

Once ratified by the majority of the bargaining unit, the CBA becomes binding on all employees. Beneficiaries of the CBA include members of the bargaining unit, non-members who pay agency fees, and any employees hired after the agreement has been enforced. Notably, filing a petition for the cancellation of union registration does not prevent the ongoing CBA negotiation process. Furthermore, CBAs should be interpreted liberally; if the terms of the agreement are clear, the intent of the contracting parties should prevail.

Finally, a valid CBA must include specific mandatory provisions. These include:

- grievance procedure;
- voluntary arbitration;
- no strike-no lockout clause; and

- the establishment of a Labour-Management Council (LMC).

If these provisions are not incorporated, the Bureau of Labour Relations (BLR) may reject the CBA's registration.

7. Termination

7.1 Grounds for Termination

In the Philippines, motivation is required a priori. Article 294 of the Philippine Labour Code provides that the employer may only terminate the employee for "just cause" or "authorised cause". The procedures for the observance of due process in terminations based on just and authorised Causes differ in terms of notice requirements and periods, as discussed in 7.2 Notice Periods.

Just Causes for Termination

The causes for termination are based on acts attributable to an employee's own wrongful actions or negligence. Article 297 of the Philippine Labour Code provides the just causes for termination, which are:

- serious misconduct;
- wilful disobedience or insubordination;
- gross and habitual neglect of duties;
- fraud or wilful breach of trust;
- loss of confidence;
- commission of a crime or offence; and
- causes analogous to the foregoing, for as long as such act or omission is voluntary or wilful on the part of the employees.

The specific requisites per ground are enumerated in DOLE Department Order No 147-15, series of 2015 ("D.O.147-15").

Authorised Causes

Authorised causes refer to lawful grounds for termination which do not arise from the fault or negligence of the employee. Articles 298 and 299 of the Philippine Labour Code enumerate the authorised causes for termination, which are classified into business-related causes and health-related causes.

The business-related causes under Article 298 of the Philippine Labour Code are:

- installation of labour-saving devices;
- redundancy;
- retrenchment; and
- closure or cessation of business operations.

For guidance, the requisites for each ground of business-related causes are outlined in D.O.147-15. In general, these grounds require good faith in effecting the termination, and that termination is a matter of last resort, there being no other option available to the employer after resorting to cost-cutting measures. Fair and reasonable criteria in the selection of employees to be terminated are likewise required for all grounds, except for the closure or cessation of business operations.

Health-related causes, specifically “disease” under Article 299 of the Philippine Labour Code, require the following conditions:

- the employee has been found to be suffering from a disease;
- the continued employment is either:
 - (a) prohibited by law; or
 - (b) prejudicial to the health of the employee or their co-workers; and
- a competent public health authority has issued a medical certificate stating that the disease is of such nature or stage that it cannot be cured within six months, even with proper medical treatment.

Collective Redundancies

Collective terminations may generally be carried out via redundancy, retrenchment, or closure or cessation of business operations.

Under Philippine law, redundancy is specifically designated as a valid ground for employee termination. Redundancy generally refers to the condition when the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise or are superfluous. This ground for termination may be collective, particularly when there is a dismissal of a large number of employees due to business or operational reasons rather than indi-

vidual performance or conduct, such as the overhiring of workers, decreased volume of business, or the dropping of a particular product line or service activity.

Regardless of the number of employees affected by the redundancy, the following requisites under D.O.147-15 must be complied with for redundancy to be a valid ground for termination:

- there must be superfluous positions or services of employees;
- the positions or services must exceed what is required for the enterprise to operate efficiently;
- the decision to abolish the redundant positions must be made in good faith;
- there must be fair and reasonable criteria for selecting which employees to terminate; and
- there must be adequate proof of redundancy, such as staffing patterns, feasibility studies, or management-approved restructuring plans.

Conversely, retrenchment occurs when a business finds itself in a precarious financial situation and must reduce labour costs to continue operating. Unlike redundancy, retrenchment does not necessarily mean that the position is no longer needed, but rather that the business can no longer afford to maintain its workforce at its current size.

Retrenchment is valid when the following requisites are present:

- the retrenchment must be reasonably necessary and likely to prevent business losses;
- the losses should be substantial, actual, or imminent, and not merely minor or de minimis;
- the expected or actual losses must be supported by sufficient and convincing evidence;
- the retrenchment must be carried out in good faith to advance business interests and not as a means to circumvent employee rights; and
- fair and reasonable criteria must be applied to determine which employees are retained or dismissed, based on factors such as efficiency, seniority, age, and financial hardship.

Lastly, closure or cessation of business, as the name suggests, refers to the complete or partial cessation of

the operations and/or shut-down of the establishment of the employer. It requires the following conditions to be permissible:

- the management's decision to close or cease business operations;
- such decision is made in good faith; and
- there is no other option available to the employer except to close or cease operations.

7.2 Notice Periods

Notice Requirements and Periods

In cases of termination based on just cause, the employer must observe due process, which involves issuing two written notices.

- The first notice should contain:
 - (a) the specific causes or grounds for termination as provided for under Article 297 of the Philippine Labour Code and company policies, if any;
 - (b) a detailed narration of the facts and circumstances that will serve as the basis for the charge against the employee; and
 - (c) a directive that the employee is given the opportunity to submit a written explanation within a reasonable period, which is construed as at least five calendar days from receipt of notice.
- After this, the employer must ensure the employee has an opportunity to be heard, either verbally or in writing, with counsel if they desire.

A formal hearing is not necessary, except under any of the following circumstances:

- when requested by the employee in writing;
- when substantial evidentiary disputes exist;
- when a company rule or practice requires it; or
- when similar circumstances justify it.

If the employer determines that dismissal is justified after considering the employee's explanation, a second notice is issued confirming that all relevant facts have been taken into account and that valid grounds for termination exist.

Both notices must be delivered personally or sent to the employee's last known address.

Thus, external advice or authorisation for just causes is not required, as the process involves the employer and employee.

Due process for authorised causes shall be deemed complied with upon service of a written notice specifying the ground/s for termination to the employee and the appropriate Regional Office of the Department of Labour and Employment (DOLE) at least 30 days before the termination takes effect. External notification to the DOLE is mandatory. Non-compliance with due process without affording the employee procedural due process will not render the dismissal ineffectual, but will entitle the employee to an indemnity of PHP50,000 in the form of nominal damages.

While disease is deemed an authorised cause for termination, case law has held that due process in termination due to disease is similar to due process for just cause termination.

Specifically, the employer must furnish the employee with two written notices, namely:

- a first notice informing the employee of the grounds for termination and allowing them to respond; and
- a second notice informing the employee of the decision to terminate their employment.

As mentioned in **7.1 Grounds for Termination**, the employer must also obtain a certification from a competent public health authority stating that the disease is of such a nature or at such a stage that it cannot be cured within six months, even with proper medical treatment.

Severance/Separation Pay

Separation pay is generally only required for authorised causes, the amounts of which are provided as follows:

- separation pay equivalent to at least one month's pay or at least one month's pay for every year of service, whichever is higher:
 - (a) installation of labour-saving devices; or
 - (b) redundancy; and

- separation pay equivalent to one month's pay or at least half a month's pay for every year of service:
 - (a) retrenchment;
 - (b) closure or cessation of business operations not due to serious business losses (when closure or cessation of business operations is due to serious business losses or financial reverses, no separation pay is required); or
 - (c) disease.

For purposes of computing separation pay, a fraction of six months' service is considered as one whole year.

For just causes, no separation pay is required unless specified by company policy or the CBA.

7.3 Dismissal for (Serious) Cause Just Causes for Termination

In the Philippines, summary dismissal or dismissal for serious cause is not defined under the law.

However, it is akin to termination for just cause under the Philippine Labour Code, as discussed in **7.1 Grounds for Termination**. Both refer to the dismissal of an employee due to serious offences, such as gross misconduct, wilful disobedience, fraud, or other grave violations of company policies or the law.

As indicated in **7.2 Notice Periods**, the employer must adhere to due process, which involves issuing two written notices. The first notice must clearly state the specific reasons for termination and include detailed facts supporting the charge. After this, the employee must be provided with an opportunity to explain their side, either verbally or in writing, and within five days from receipt of the first notice. If, after considering the employee's explanation, the employer determines that dismissal is justified, a second notice must be issued to confirm the termination.

Failure to follow the proper procedural due process will not invalidate the dismissal; however, the employee will be entitled to receive nominal damages amounting to PHP30,000 as indemnity for the violation of their rights.

Other Forms of Summary Dismissals in the Philippine Labour Code

Employees may be terminated for violating a Union Security Clause under Article 259 (c) of the Philippine Labour Code if such a clause is included in the CBA. This grants the SEBA the authority to request an employer to dismiss any employee who fails to comply with the union security agreement, such as by refusing to join the union or failing to maintain membership in good standing, provided that there is sufficient evidence for the violation thereof. This only applies to new employees hired after the signing of the CBA containing the union security clause, unless they are religious objectors. Termination based on Article 259 (c) of the Philippine Labour Code shall follow the procedural requirements for just cause.

Article 279 (a) of the Philippine Labour Code provides for termination upon the commission of prohibited activities. Union officers who knowingly participate in an illegal strike are deemed to have lost their employment status. In addition, any employee, union officer or ordinary member who knowingly participates in the commission of illegal acts during a strike (irrespective of whether the strike is legal or illegal) is also deemed to have lost their employment status. The due process here does not require a notice and hearing, as the act itself results in automatic loss of employment status.

Under Article 278 (g) of the Philippine Labour Code, strikers who violate orders, prohibitions and/or injunctions as are issued by the DOLE Secretary or the National Labour Relations Commission (NLRC) may be subject to immediate disciplinary action, including dismissal.

Lastly, under Article 296 of the Philippine Labour Code, the employment of a probationary employee may be terminated if he/she fails to meet the reasonable standards for regular employment, as long as the employer clearly communicated these standards at the time of hiring.

7.4 Termination Agreements Termination Agreements

Termination agreements or mutual separation agreements are permissible in the Philippines, provided that the terms are mutually agreed upon by both the

employer and employee, without coercion or undue influence. Otherwise, this will be tantamount to constructive dismissal.

As a contractual agreement, the procedural and substantive due process requirements under the Philippine Labour Code are not applicable. However, if the termination agreement is based on authorised causes, such as redundancy or retrenchment, the employee must receive at least the minimum separation pay mandated by law, as outlined in **7.2 Notice Periods**.

Releases, Waivers, and Quitclaims

Case law has recognised the validity of the waivers and quitclaims signed by the employees, provided they are credible, reasonable, and voluntarily executed. The Supreme Court has also upheld the validity of quitclaims where the workers voluntarily accepted a reasonable amount or consideration as settlement.

However, a waiver of claims must not include rights or benefits that cannot be legally waived under Philippine law, such as those related to illegal dismissal or non-waivable statutory benefits. Such waiver shall be considered null and void for being contrary to public policy.

7.5 Protected Categories of Employee

Women Employees

Under Article 134 of the Philippine Labour Code, it is unlawful for an employer to require as a condition for or continuation of employment that a woman employee shall not get married. Employers are also prohibited from stipulating that once a woman employee marries, she will be automatically considered resigned or terminated.

Under Article 135, employers also cannot dismiss a woman due to her pregnancy or while she is on maternity leave, or refuse to admit or to discharge a woman back to work after maternity leave for fear that she may become pregnant again.

Article 158 of the Philippine Labour Code and Republic Act No 10151 provide that women nightworkers shall likewise not be dismissed for reasons of pregnancy, childbirth or childcare responsibilities. Women nightworkers shall not lose the benefits regarding their

employment status, seniority, and access to promotion which may attach to their regular night work position.

Domestic Workers or Kasambahays

Republic Act No 10361, or the “Kasambahay Act”, protects against the dismissal of domestic workers (eg, general housekeepers, cooks, gardeners, laundry persons), who can be terminated for the following causes:

- misconduct or wilful disobedience;
- gross or habitual neglect;
- fraud or breach of trust;
- crime or offence;
- violation of terms and conditions of employment;
- disease; and
- other analogous causes.

If a *kasambahay* is dismissed for reasons other than these causes, the employer is required to pay compensation equivalent to 15 days’ worth of work.

Moreover, pregnancy and marriage are explicitly identified as invalid grounds for termination under the law. Employers cannot dismiss a *kasambahay* merely because they become pregnant or get married. This protection aligns with the broader labour laws that prohibit discrimination based on marital status or pregnancy, ensuring that domestic workers are treated fairly and their personal circumstances are not used as a basis for dismissal.

Persons with Disabilities

Under Section 32 of the Republic Act No 7277, as amended by Republic Act No 9442, or the “Magna Carta for Persons with Disability”, persons with disability (PWDs) cannot be dismissed simply because of their disability, unless the employer can demonstrate that the disability impairs the satisfactory performance of essential job functions, causing prejudice to the business.

Union Members, Officers, and Employee Representatives

Article 259 (b) of the Philippine Labour Code prohibits employers from requiring employees to refrain from joining a labour organisation or compelling them to

withdraw from one to which they already belong, as a form of unfair labour practice.

Case law has also illustrated the following dismissals to constitute unfair labour practice:

- dismissing union members to secure the union's defeat in the certification election;
- dismissing union officers in a manner that threatens the union's existence, regarded as a form of union busting;
- dismissing an employee because of their act of soliciting signatures for the purpose of forming a union; and
- dismissing employees because of their act of engaging in valid and legal concerted union activities.

Employers who commit unfair labour practices are subject to criminal and civil liability in the form of damages, fines and other penalties, following Article 258 of the Philippine Labour Code. Employees who are dismissed due to ULP may be entitled to reinstatement without loss of seniority rights and other privileges, as well as back wages and other benefits.

8. Disputes

8.1 Wrongful Dismissal

Wrongful or Illegal Dismissal

Case law provides that there is illegal dismissal when there is no clear, valid and legal cause for termination of employment, specifically when:

- there is no just or authorised cause for termination; or
- when the employee is constructively dismissed.

Constructive dismissal occurs in the following instances:

- when an employee is compelled to resign involuntarily because continued employment has been rendered impossible, unreasonable, or unlikely;
- when there is a demotion in rank and/or a diminution in pay; or

- when an employer demonstrates clear discrimination, insensibility, or disdain, creating an unbearable work environment, effectively leaving the employee no choice but to resign.

Reinstatement Pending Appeal

Complaints for illegal dismissal are filed with the labour arbiter under Article 224 of the Philippine Labour Code. It is important to note that under Article 229 of the Philippine Labour Code, the decision of the labour arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. Thus, no writ of execution is required to enforce the labour arbiter's decision, and the employer must reinstate the employee even if they plan to contest the decision.

In implementing the labour arbiter's order for reinstatement, the employer may opt for actual reinstatement, where the employee is physically reinstated to their position and allowed to resume work, or payroll reinstatement, where the employer must continue to pay the employee's salary during the pendency of the appeal.

Reliefs

As a primary relief, employees who are illegally dismissed are entitled to reinstatement without loss of seniority rights and other privileges under Article 294 of the Philippine Labour Code.

However, if reinstatement is no longer possible due to the strained relations or the impossibility thereof, the employee shall receive separation pay in lieu of reinstatement as a secondary relief.

In both cases, the employee shall also be awarded full back wages, inclusive of allowances, and other benefits or their monetary equivalent from the time their compensation was withheld up to the time of actual reinstatement.

In *C.P. Reyes Hospital et al., v Barbosa*, G.R. No. 228357, 16 April 2024, the Philippine Supreme Court confirmed that even probationary employees may also be awarded with backwages computed from the time that compensation was withheld up to the finality of the decision, which may go beyond the probationary

period of the employee. This abandons the previous rule that probationary employees may only be awarded back wages up to the expiration of their probationary period.

In the recent case of *Philippine Airlines v Ahmee, et al.*, G.R. No. 221065, dated 7 April 2025, the Supreme Court clarified the standards for proving money claims related to employee salaries and benefits. It stated that payrolls and vouchers can serve as acceptable proof of payment only if they clearly show that the employees actually received these benefits. Additionally, when payments are made through electronic wire transfers, such as automatic payroll arrangements with banks, employers are required to provide proof that they instructed their bank to credit their employees' payroll accounts. According to the Supreme Court, the mere submission of payroll registers and payslips would only constitute proof that the employer has prepared the corresponding payroll, but not as actual proof of payment to its employees.

Additionally, the following reliefs are also granted:

- moral and exemplary damages and attorney's fees; and
- legal interest on separation pay, back wages, and other monetary awards.

8.2 Anti-Discrimination

In General

Where the employer fails to treat employees equally despite there being no rational basis for the distinction, such as when they are denied privileges which are granted to others under similar conditions and circumstances, the employee claims damages under Article 32 of the Philippine Civil Code against the employer with the Labour Arbiter. As this forum is merely administrative in nature, only substantial evidence is required, or such an amount of relevant evidence as a reasonable mind might accept as adequate to justify a conclusion.

Age

Republic Act No 1091, or the "Anti-Age Discrimination in Employment Act", prohibits employers from discriminating based on age in matters of compensation, working conditions, promotions, or training opportu-

nities. Employers also cannot terminate employees solely due to age or enforce early retirement based on age. However, age limitations are permissible provided that they fall under any of the exceptions as provided under Section 6 of the Act, such as when age is a bona fide occupational qualification necessary for the business.

Violations of the Anti-Age Discrimination in Employment Act expose the employer to criminal liability, punishable by a fine ranging from PHP50,000 to PHP500,000, imprisonment of three months to two years, or both penalties, at the discretion of the court. The offended party is entitled to damages arising from the crime under Article 100 of the Revised Penal Code.

As a violation of this Act is criminal in nature, the guilt of the employer must be proven beyond a reasonable doubt, or the evidence must produce a conviction in the mind of a sensible, impartial person.

Moral and exemplary damages may also be sought before the Labour Arbiter under Articles 2217 and 2229 of the Civil Code, respectively, which only require substantial evidence.

Gender and/or Marital Status

Article 133 of the Philippine Labour Code, as amended by Republic Act No 6725, prohibits employers from discriminating against female employees with respect to the terms and conditions of employment based solely on their sex, including paying female employees less than male employees for work of equal value, and favouring male employees over female employees in matters like promotion, training, or scholarship opportunities.

Violations of this provision are criminal in nature, resulting in a penalty of a fine ranging from PHP1,000 to PHP10,000, or imprisonment of not less than three months and not more than three years, or both, at the discretion of the court, including damages resulting from the criminal offence to be awarded to the offended party. Moral damages and exemplary damages may also be claimed.

On the other hand, discriminatory acts under Republic Act No 9710, or the “Magna Carta of Women”, include the following:

- any gender-based distinction, exclusion, or restriction that impairs or nullifies the recognition, enjoyment, or exercise of human rights and fundamental freedoms on an equal basis with men;
- any act or omission, including by law, policy, or administrative measure, that directly or indirectly excludes or restricts women from accessing opportunities or rights;
- failure to provide mechanisms to offset gender-based disadvantages, resulting in women being denied or restricted in their access to rights, benefits, or privileges; and
- discrimination compounded by or intersecting with other grounds such as ethnicity, age, poverty, or religion.

Pursuant to Section 41 of Republic Act No 9710, private entities or individuals who commit these discriminatory acts are liable for damages to the injured party, without prejudice to other remedies available under the law.

Health Conditions and Disabilities

Under Section 32 of Republic Act No 7277, as amended by Republic Act No 9442, or the “Magna Carta for Persons with Disability”, discrimination against qualified PWDs is prohibited in all aspects of employment, including hiring, promotion, compensation, and termination.

Acts of discrimination include limiting or classifying PWDs in ways that harm their job prospects, using job standards or tests that disproportionately screen them out unless necessary for the position, and applying methods that result in disability-based discrimination. Providing lower compensation to PWDs for the same work, favouring non-disabled employees in promotions or training, reassigning PWDs to roles they cannot perform due to their disability, or dismissing PWDs without first offering reasonable accommodations are also discriminatory acts. Additionally, PWDs cannot be excluded from labour union membership or subjected to ineffective employment tests that do not accurately measure their abilities.

For the first violation, the offender may face a fine ranging from PHP50,000 to PHP100,000, or imprisonment for a period of not less than six months but not more than two years, or both penalties, at the discretion of the court. For subsequent violations, the penalty increases to a fine ranging from PHP100,000 to PHP200,000, or imprisonment for a period of not less than two years but not more than six years, or both, depending on the court’s decision. The injured party may likewise claim damages arising from the criminal offence, as well as moral and exemplary damages.

Solo Parents

Section 7 of Republic Act No 8972, or the “Solo Parents’ Welfare Act of 2000”, provides that no employer shall discriminate against any solo parent employee with respect to terms and conditions of employment on account of their status.

In accordance with Section 52 of the Act’s Revised Implementing Rules and Regulations, the first violation of the Act may result in a fine ranging from PHP10,000 to PHP50,000, or imprisonment for a period of six months to one year, or both, at the discretion of the court. For any subsequent violation, the court may impose a higher penalty, consisting of a fine ranging from PHP100,000 to PHP200,000, or imprisonment for a period of one to two years, or both, as determined by the court. In a similar vein to the aforementioned laws, the injured party may claim damages arising from the criminal offence, as well as moral and exemplary damages.

8.3 Digitalisation

Videoconferencing

In accordance with the National Labour Relation Commission (NLRC) En Banc Resolution No 13-22, series of 2022, the use of videoconferencing or other electronic means for mandatory conciliation, mediation conferences, and hearings in labour disputes is permissible to ensure the safety and health of personnel and stakeholders and to address other justifiable concerns.

Thus, mandatory conciliation and mediation conferences and other hearings may be conducted face-to-face as far as practicable, or by videoconferencing or other electronic means, or both. If any of the parties

have no access to technology for electronic hearings, the NLRC may provide a hearing room and laptop/tablet for their use, subject to the availability of funds.

E-Filing before the Court of Appeals

When the labour dispute has escalated to the Court of Appeals, pursuant to Rule 43 of the Rules of Court, the electronic filing of pleadings is required. From 1 December 2024, all pleadings, motions, and other legal documents within certified judicial regions in the Philippines will be required to be filed and served electronically through email, in PDF format, in accordance with the “Guidelines on Submission of Electronic Copies of Pleadings and Other Court Submissions being Filed before the Lower Courts Pursuant to the Efficient Use of Paper Rule” or A.M. No 10-3-7-SC/A.M. No 11-9-4-SC. This procedure applies to documents filed with the court as well as those served to opposing parties and their legal counsel.

9. Dispute Resolution

9.1 Litigation

Specialised Employment Forums

Specialised employment forums in the Philippines are provided for by various labour agencies, among which are as follows.

The Single Entry Approach (SEnA) is an administrative approach to provide a speedy, impartial, inexpensive, and accessible settlement procedure for all labour issues or conflicts to prevent them from escalating into full-blown disputes or actual labour cases. Under Article 234 of the Philippine Labour Code, all issues arising from labour and employment shall be subjected to mandatory conciliation-mediation.

If the issue has escalated into a labour dispute, the NLRC is the quasi-judicial body that hears and decides such cases. It has regional arbitration branches across the country to ensure accessibility. The Labour Arbiters are the NLRC representatives in the country's various regions, having jurisdiction over termination disputes, unfair labour practices, money claims and damages arising from employer-employee relations, among others, based on Article 224 of the Philippine Labour Code.

The DOLE Regional Directors have jurisdiction over enforcement and inspection cases for labour standards compliance, recruitment and placement, occupational health and safety violations under Article 128 of the Philippine Labour Code, union registration-related cases under Article 243 of the Philippine Labour Code, and monetary claims not exceeding PHP5,000, among others.

Med-arbiters and the Bureau of Labour Relations have jurisdiction to hear, conciliate, mediate and decide representation cases, or to assist in the disposition of intra- or inter-union disputes under Article 232 of the Philippine Labour Code.

The Philippine Overseas Employment Administration (POEA) has jurisdiction over violations related to the licensing and registration of recruitment and employment agencies, disciplinary actions involving employers, principals, and contracting partners, particularly with Filipino migrant workers under Section 6, Rule X of the implementing rules of the Migrant Workers Act or Republic Act No 10022.

Collective Actions and Representation

A group of employees can appoint a representative to file a case on their behalf, especially in cases involving common issues such as illegal dismissal or non-payment of benefits. Multiple individual claims arising from the same or similar circumstances can be consolidated into a single case for efficiency and consistency in rulings under Section 3, Rule IV of the 2011 NLRC Rules of Procedure, and Section 1, Rule 31 of the Rules of Court.

Lawyers can represent parties in labour disputes. However, under Section 6, Rule III of the NLRC Rules of Procedure, parties to a case may represent themselves if they choose. Employees who are members of a union may also be represented by their union officers or legal counsel in labour disputes.

9.2 Alternative Dispute Resolution

All kinds of labour disputes may be submitted to, settled, or resolved through voluntary arbitration by voluntary agreement of the parties, taking precedence over dispute settlement methods.

Parties may mutually agree to submit their disputes to a voluntary arbitrator or panel of arbitrators at any stage of the proceedings. Voluntary arbitration is often employed in labour disputes involving the interpretation or implementation of CBAs and company personnel policies.

Article 273 of the Philippine Labour Code provides that parties to a CBA must establish a grievance machinery for the resolution of disputes. This machinery should address grievances related to the interpretation or implementation of the CBA, as well as issues arising from company personnel policies.

If a grievance is not resolved within seven calendar days, it is automatically referred to voluntary arbitration, in accordance with the process outlined in the CBA.

9.3 Costs

Damages and attorney's fees may be awarded to an employee under the conditions outlined below.

- Moral damages may be awarded to compensate one for diverse injuries such as mental anguish, besmirched reputation, wounded feelings, and social humiliation, as provided under 2199 of the Philippine Civil Code.
- Nominal damages under Article 2221 of the Philippine Civil Code may also be awarded when rights are violated, such as in cases of procedural lapses during termination, even if no actual or substantial damage is proven.
- Exemplary damages may be awarded only if the dismissal was shown to have been effected oppressively or maliciously under Article 2208 of the Philippine Civil Code.
- Attorney's fees are awarded in cases where exemplary damages are recovered, or where the employer acted in a wanton, fraudulent, or grossly negligent manner based on Article 2208 of the Philippine Civil Code.
- Moreover, Article 111 of the Philippine Labour Code allows the award of attorney's fees in cases of unlawful withholding of wages, where the culpable party may be assessed attorney's fees equivalent to 10% of the amount of wages recovered.

Trends and Developments

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ACCRALAW is one of the Philippines' leading law firms with a cohesive multidisciplinary team of legal professionals who possess in-depth knowledge in specialised fields of law, backed by extensive experience of 53 years in the practice of law. From a core group of seven lawyers at its inception in 1972, the firm has grown to a prestigious service organisation of more than 190 lawyers. Its principal offices are in Bonifacio Global City, Taguig, Metro Manila. The firm has full-service branches in thriving commercial centres in the Visayas and Mindanao, in Cebu City

and Davao City, respectively. ACCRALAW's Labour and Employment department handles litigation and advisory services on all employment-related matters, including dismissal and suspension of employees, money claims, petitions for certification elections, union disputes, collective bargaining negotiations, unfair labour practices, strikes and lockouts, labour-related civil/criminal cases, social welfare benefits, labour law compliance and audits, and corporate re-organisations.

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Engagement of Employers of Record

With the prevalence of cross-border services, foreign companies have resorted to the engagement of Employers of Record (“EOR”) as a means to hire Philippine-based workers without having to establish a separate local entity. Although it is a recent practice in Philippine labor and employment, the engagement of EORs, in and of itself, may be considered a job contracting arrangement governed by Articles 106 to 109 the Labor Code of the Philippines (“Labor Code”), as implemented by Department of Labor and Employment (“DOLE”) Department Order No 174, series of 2017 (“DO 174”).

Among the salient provisions of DO 174 is the prohibition against labour-only contracting, which refers to an arrangement where the contractor merely recruits, supplies or places workers to perform a job or work for a principal, and where the following elements are present:

- the contractor does not have substantial capital or investments in the form of tools, and the employees recruited are performing activities which are directly related to the main business operations of the principal; or
- the contractor does not exercise the right to control over the performance of the work of the employees.

DO 174 likewise requires the registration of a job contractor with DOLE and prescribes mandatory stipulations in the Service Agreement between the

contractor and the principal and the Employment Contract between the contractor and the employees. A labour-only contracting arrangement, which is presumed to exist in the absence of a DOLE certificate of registration, or the failure to enforce contracts that are in accord with the formalities required by DO 174, renders the principal liable as a direct employer of the contracted personnel.

While an EOR may have operating capital and work tools sufficient to maintain a physical office and/or host its workers, how it conducts business tends to signify the existence of the second element of labour-only contracting, in that control over performance of the work is expressly ceded to the foreign client. By contract, the EOR is only obligated to perform clerical or administrative support tasks for its client, including the payment of mandatory contributions to the Social Security System, Philippine Health Insurance Corporation, and Home Development Mutual Fund, and the withholding and remittance of employee income taxes to the Bureau of Internal Revenue, all of which are only feasible if the employer has a local presence.

The engagement of an EOR may also be tested against the four-fold test, which is used to determine the existence of an employer-employee relationship. The elements of the four-fold test are:

- selection and engagement of the employee;
- payment of wages;
- power of dismissal; and

- power to control the work of the employee.

As may be gleaned above, the last element is the most critical determinant of the presence of an employer-employee relationship, and refers to the exercise of control, not just over the results of the work to be done, but also over the means and methods by which such work is to be accomplished. Thus, “badges of control” which would increase misclassification risks include the imposition of the worker’s work schedule, code of conduct, and other conditions of work, course corrections, periodic evaluations, training, and assignments, and furnishing of facilities and materials.

In an EOR arrangement, not only is the power to control relinquished to the foreign company, but the latter is also often allowed to scout for, vet, or even interview prospective employees for the EOR to hire, thereby effectively carrying out the selection and engagement process for itself. It is also allowed to participate, if not initiate, disciplinary actions for erring employees, practically because its own employees observe the contracted personnel’s performance on a day-to-day basis and are, thus, able to detect lapses or discover any misconduct. These further increase misclassification risks against the foreign principal, who may then be impleaded in a labour suit and held liable for payment of salaries and benefits under the law or illegal dismissal, as the case may be.

Even if the principal is willing to assume employee misclassification risks, it may face other challenges arising from the engagement of an EOR, such as the enforcement of restrictive covenants on confidentiality, non-competition, and conflicts of interest against employees with whom it does not have any contract. Furthermore, depending on the extent of its operations, the engagement of a local EOR and its Philippine-based workers may be construed as an expansion of its business, especially if the services performed result in the principal’s profit. This situation exposes the latter to risks associated with permanent establishment, which may result in the assessment of corporate income taxes, as well as fines and penalties. Additionally, it could be determined that the entity is conducting business without a license. In such a case, it will not be allowed to initiate or take part in any action in any court or administrative agency in the

Philippines. However, it can still be sued or subjected to legal proceedings for any valid cause of action under Philippine laws.

Data Privacy Issues in Remote Work Arrangements

Under Republic Act No 11165 or the Telecommuting Act, employers are free to offer a telecommuting program to their employees on a voluntary basis, and upon mutually agreed terms and conditions that do not diminish or impair their existing benefits and that ensure their fair treatment vis-à-vis onsite employees. Under DOLE Department Order No 237, series of 2022 (“DO 237”), the said program shall contain provisions as are reasonably necessary to ensure its effective implementation, including the minimum requirements of computer hardware and software, terminals, host applications, and internet connectivity and security, as well as the standards to protect personal and proprietary information under Republic Act No 10173 or the Data Privacy Act of 2012 (“DPA”) and the various issuances issued by the National Privacy Commission (“NPC”).

To avoid disrupting their operations, employers use tools and software to monitor employees’ activity and productivity while working off-site. These measures curb the abuse of concessions afforded to employees under remote work arrangements, primarily caused by the employer’s lack of visibility over the actual performance of work. Nonetheless, while work surveillance effectively deters performance lapses and exacts accountability, it also gives rise to data privacy issues, thereby warranting the protection afforded to employees as data subjects under the DPA.

In NPC Advisory Opinion No 2024-003, it was held that the installation of monitoring software in a company-issued computer, wherein the web camera and microphone are turned on at random intervals to record short videos of the employee and his surroundings, as well as work-related meetings and training sessions, is a form of data processing under the DPA, as it involves the collection of the employee’s personal information. The NPC opined that this preventive monitoring of employees, if pursuant to the fulfilment of the employment contract and/or necessary for the legitimate interests of the employer, may be allowed under the DPA. In NPC Advisory Opinion No 2024-005, the use of an AI program to ana-

lyse call recordings and e-mail exchanges between employees and customers to evaluate work performance was likewise deemed to be in furtherance of legitimate interests since it directly contributes to the employer's goal of improving its services. These echo Privacy Policy Office Advisory Opinion No 2018-084 as regards the installation of monitoring software to record keystrokes and take random snapshots of the employee's computer screen. However, the NPC opined that such measures should directly satisfy the purpose of monitoring.

In all these cases, the NPC reminded employers to ensure that the processing of personal information complies with the general principles of data privacy:

- transparency;
- legitimate purpose; and
- proportionality.

First, it must be determined whether the collection of data is proportional to the goals of monitoring and whether it aligns clearly with the needs and objectives of the organisation. Therefore, the personal information of employees should only be processed through computer monitoring if the intended purpose cannot be achieved by any less intrusive means.

In any event, employers are mandated to effectively communicate to the employees the purpose, scope, and actual method of monitoring, the security measures undertaken to protect their personal information, and the procedure for redress if data privacy rights are breached. They should also issue policies or set guidelines on the use of company-issued devices and equipment, especially within the context of a remote work arrangement. Otherwise, they will have failed to comply with the obligations of a personal information controller under the DPA and may be held liable for administrative fines and penalties.

Employment of Foreign Nationals and Digital Nomads

The employment of foreign nationals by Philippine companies requires, among others, an Alien Employment Permit ("AEP") issued by DOLE as a prerequisite for a work visa granted by the Philippine government through the Bureau of Immigration. In this regard,

DOLE has released several iterations of the rules governing the employment of foreign nationals, the latest of which is Department Order No 248, series of 2025 ("DO 248"), effective on 9 February 2025.

Under DO 248, the application for and grant of an AEP are subject to the same legal requirements as in recent years, including the conduct of the Labor Market Test, which entails the publication of the vacant position and the name of foreign national sought to be hired, and the submission of documents that verify the latter's qualifications for work in the Philippines (ie, contract of employment, tax forms indicating his Taxpayer Identification Number, affidavit from the employer stating that no Filipino applied or was found competent for the position, et al).

In addition to these requirements, DO 248 now requires DOLE Regional Offices to assess the economic impact of employing foreign nationals in specific sectors, professions, occupations, or industries through an Economic Needs Test ("ENT") before an application for AEP is granted. The ENT specifically takes into account:

- the shortage or surplus of Filipino workers in the sector in which the foreign national is intended to be employed;
- the unavailability of specialised skills, expertise or knowledge inherent to the position of the foreign national in the local labour market and whether these can be met within a short period of time by training local workers; and
- whether the employment of the foreign national is deemed essential for the development, competitiveness or technological advancement of the sector and serves national economic interests, particularly among employers granted fiscal incentives, engaged in priority investments, or operating public utilities under the law.

DO 248 likewise requires employers to adopt an Understudy Training Program or Skills Development Program to ensure the effective transfer of skills, knowledge, and technology from foreign employees to Filipino employees, and these programs must be submitted to the DOLE Regional Office together with the application for AEP. A progress evaluation or

accomplishment report must thereafter be submitted to the same office after each periodic evaluation and/or upon completion of the program.

The requirements outlined in DO 248 are consistent with the “Filipino First” principle enshrined in the Philippine Constitution and promote the preference for Filipino labour. Failure to comply therewith may result in the denial of the AEP or the revocation of one already issued.

Relatedly, on 24 April 2025, the President of the Philippines promulgated Executive Order No 86 (“EO 86”), authorising the issuance of Digital Nomad Visas (“DNVs”) to non-immigrant foreign nationals staying in the Philippines for a temporary period while working remotely for non-Filipino clients or employers. DNVs shall be valid for one year, renewable for the same duration, and may be revoked upon the holder’s engagement in local employment, commission of fraud or misrepresentation in the application, violation of immigration laws, or such other grounds as may be determined by the Department of Foreign Affairs (“DFA”).

To be eligible for a DNV, the foreign national must comply with the following and must continue to possess such qualifications during the validity:

- must be at least 18 years of age;
- must show proof of remote work using digital technology;
- must show proof of sufficient income, which is generated outside the Philippines;
- must show proof of no criminal record;
- must have health insurance valid for the period of the DNV;
- must be a national of a country that offers DNVs to Filipinos and where the Philippines has a Foreign Service Post;
- must not pose a threat to the internal or external security of the Philippines; and
- must not be employed in the Philippines.

As of this date, the DFA has yet to issue the implementing guidelines for EO 86. Nonetheless, the promulgation of EO 86, which seeks to promote tourism and the economy in the country, clarifies the scope of Philippine laws with respect to the employment of for-

eign nationals. Verily, the mere performance of work by a foreign national in the Philippines does not, by itself, warrant the application for an AEP or a work visa, as the nationality of the employer and where it operates effectively distinguish between a digital nomad subject of EO 86 and a foreign national employee subject to Philippine labour laws.

The Workplace as a Safe Space

Pursuant to Republic Act No 7877 or the Anti-Sexual Harassment Act of 1995 (“ASHA”) and Republic Act No 11313 or the Safe Spaces Act (“SSA”), employers in the Philippines are mandated to prevent, deter, or punish the commission of sexual harassment acts in the workplace. The SSA casts a wide net as what constitutes sexual harassment includes “any conduct that is unwelcome and pervasive and creates an intimidating, hostile or humiliating environment for the recipient.” Moreover, compared to the ASHA, which penalises an offender only if he has moral ascendancy over the complainant, the SSA considers as an offence sexual harassment committed against peers, colleagues, or co-workers, regardless of rank and gender.

Under both statutes, the employer is mandated to implement a workplace policy against sexual harassment and to create an independent internal mechanism or a committee on decorum and investigation (CODI) to investigate and address complaints of sexual harassment. The CODI should adequately represent the management, the employees from the supervisory rank and the rank-and-file, and the union, if any, must be headed by a woman, and must be composed of members at least half of whom are women. Notably, a verified and named complaint must be resolved by the CODI within ten days, in accordance with a duly implemented Anti-Sexual Harassment and Safe Spaces Policy, after the alleged offender is afforded due process.

It must be remembered that sexual harassment is a criminal offence under the law. However, the person who has the legal right to initiate criminal action against the offender is the victim, not the employer.

The employer’s duty, in turn, is to spread awareness about the law, create a code of conduct which penalises such acts, constitute the CODI, and host anti-sex-

ual harassment seminars. Otherwise, in the event of a labour inspection conducted by DOLE, the employer may be held liable for fines of up to PHP100,000.00 computed daily, from the issuance of the compliance order until actual compliance.

An employer's failure to fulfil its duties under the ASHA and SSA may also be determined by a labour tribunal or court, which can award damages to an aggrieved employee whose complaint for sexual harassment in the workplace was not addressed. In fact, in the 2024 case of *Francheska Buban v Xerox Business* (G.R. No 268399), the Supreme Court confirmed that the petitioner employee was constructively dismissed due to the hostile, offensive, and intimidating work environment perpetrated by the respondent employer when it failed to promptly and sensitively act on her complaint for sexual harassment against a superior. However, the petitioner remained employed, and therefore, there was no economic loss that would justify the payment of separation benefits and back wages. The employer was remiss in its duty to deter the commission of acts of sexual harassment and to provide procedures for the resolution or prosecution of said acts, and consequently, the Supreme Court held the employer solidarily liable with the offender for payment of damages to the petitioner.

Evidentiary Rules in Money Claims

Under the Labour Code, claims for the payment of salaries and benefits arising out of an employer-employee relationship may be brought before the courts within three years from the time the cause of action accrued or when payment was due. In these types of claims, the legal principle of "he who alleges must prove" does not instantly apply, considering that accessibility over employment records, such as payrolls and remittances, that would supposedly prove payment to the employee, is exclusively within the custody and control of the employer. Thus, it is a settled labour doctrine that in cases involving non-payment of monetary claims, the employer has the burden of proving that the employees received their wages and benefits and that the same were paid in accordance with law.

Regarding the type of evidence required to prove payment, the Supreme Court has consistently held that

a payslip bearing the employee's signature and an explicit acknowledgement of full compensation serves as substantial evidence of actual payment.

Conversely, unsigned payslips are insufficient proof as they are mere statements of an employee's gross income. This was emphasised in the 2025 case of *Philippine Airlines, Inc. v Romeo N. Ahmee* (G.R. No 221065 and No 221164), where the Supreme Court held that payroll sheets and vouchers are treated as substantial evidence of payment only if they show both the employee's receipt of the amounts and the date or period covering such payment. More importantly, this case recognised the modern practice of automatically crediting salaries and benefits to employees' designated bank accounts, and identified three stages in a bank crediting arrangement:

- the preparation of payroll by the employer;
- the employer's submission and corresponding receipt by the bank of the payroll or advisory; and
- the crediting of the amounts to the employees' bank accounts.

To sufficiently refute monetary claims raised by employees, it is not enough for the employer to present the payroll records prepared by its relevant officers, as in the first stage. While such documents enjoy the presumption of regularity, the principle only concerns the preparation of the payroll, but not the employees' receipt of the amounts stated therein. Hence, to establish payment, the employer should also prove the existence of the second stage, where the bank already participates in the process, by submitting evidence of its submission to or receipt by the bank of the payroll or the advisory. Notably, while evidence of the third stage would certainly strengthen an employer's case, the Court surmised that the employer, as a client of the bank, can already reasonably presume that the latter has fulfilled its obligation of depositing the amounts to the employees' accounts and, as such, is discharged from the burden to show such evidence. Thus, at bottom, once the employer submits evidence of the first and second stages, the burden of proof then shifts to the employees who will have to show that their respective bank accounts were not credited with any amounts during the applicable periods.

POLAND

Law and Practice

Contributed by:

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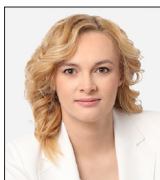
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HRLS Zwolińska & Zwoliński is an employment law firm specialising exclusively in labour and employment matters. The firm provides strategic advice to leading Polish and international employers on their most complex workforce and industrial relations challenges. Drawing on extensive multi-sector expertise, HRLS combines legal knowledge with an in-depth understanding of Poland's regulatory environment and industrial relations landscape. This enables the team to deliver tailored solutions in collective bar-

gaining, trade union negotiations, workforce restructuring, compliance and employment litigation. The firm is also known for supporting clients in projects of nationwide importance, where labour relations carry significant legal and reputational implications. Led by partner Magdalena Zwolińska – recognised as one of Poland's foremost experts in trade union advisory – the firm is uniquely positioned to guide clients through the most sensitive and high-risk labour law challenges.

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1. Employment Terms

1.1 Employee Status

Blue-Collar and White-Collar Employees

Polish labour law does not make any formal distinction between blue-collar and white-collar workers – the provisions of the Labour Code apply to both. In Poland, employee status – understood as employment based on a standard employment contract regulated by the Labour Code – offers the strongest legal protection among various forms of work arrangements. This includes comprehensive rights such as:

- paid leave;
- social security benefits;
- protection against unjust dismissal; and
- regulated working hours.

Civil Law Contracts

In contrast, civil law contracts – such as business-to-business (B2B) contracts or contracts of mandate (*umowa zlecenia*) – do not provide the same level of protection. While they offer greater flexibility and can be more cost-effective – especially from a tax perspective – they lack the security and benefits associated with full employment status. In practice, white-collar professionals in Poland are sometimes engaged under civil law contracts rather than standard employment agreements. This is often due to mutual arrangements that are financially advantageous for both side of the

contract, particularly in terms of lower tax and social security contributions.

1.2 Employment Contracts

Types of Employment Contracts

The most commonly used types of employment contracts in Poland are the following.

Trial period contracts

These are used to assess a new employee's potential for a long-term role. They typically last from one to three months, depending on the length of the contract that is expected to follow.

Fixed-term contracts

These are time-limited agreements that automatically end once the agreed period is over, without requiring a termination notice. Under Polish labour law, such contracts cannot exceed 33 months in total, and an employer can sign a maximum of three fixed-term contracts with the same employee. If the employment exceeds this 33-month limit, or if a fourth contract is concluded, the arrangement is automatically reclassified as an indefinite-term contract, effective from either the day after the 33-month period ends or the day the fourth contract is signed – whichever happens first.

Permanent (indefinite) contracts

These offer the highest level of job stability. In many cases, especially for senior-level employees, the trial period may be skipped altogether, and an indefinite-term contract is offered from the outset.

Formal Requirements of Employment Contracts

Employment contracts must be documented in writing and prepared in Polish, or alternatively in a bilingual version that includes both Polish and a foreign language. If the employment contract was not concluded in written form, the employer must – before allowing the employee to begin work – provide written confirmation of the arrangements regarding the parties to the contract, the type of contract, and its terms and conditions. A written contract requires either a traditional handwritten signature or a qualified electronic signature. It is important to note that not all electronic signatures meet the legal criteria under Polish regulations – for instance, signatures from platforms such as DocuSign may not be considered legally binding in written form. Therefore, only electronic signatures certified by the Polish National Certification Centre should be used.

Every employment contract in Poland must contain the following information:

- identification of both parties, including the employer's registered office address;
- specification of the contract type, whether it is for a trial period, a fixed term or an indefinite period;
- the date on which the contract is signed; and
- details regarding work and pay, such as the employee's job title, place of work, salary, start date, and – if applicable – the length of the trial or fixed-term period.

In accordance with the provisions of the Labour Code, the employer is obliged to inform the employee, in paper or electronic form, about the terms and conditions of employment within no later than seven days from the date of concluding the employment contract. This information should include (among other things):

- details on the applicable daily and weekly working time standards;
- the dates and frequency of salary payments; and

- the applicable notice period for terminating the contract.

1.3 Working Hours

Under Polish labour law, the standard working time must not exceed eight hours per day and 40 hours per week, within a five-day workweek. A common model is the basic working time system, where employees typically work from 9am to 5pm. Some employers adopt flexible working time arrangements, letting employees decide when to start work within a predefined time range – for example, between 8am and 10am.

However, task-based systems are also widely used, especially in creative or project-oriented roles. In such cases, employees are not required to work fixed hours but are expected to complete their tasks, with the flexibility to organise their workday – provided they attend any mandatory scheduled events such as business meetings. In production-related industries, it is also common to use a shift work system, which allows companies to maintain continuous operations throughout the day. This system typically involves rotating shifts (morning, afternoon and night) and is designed to ensure efficiency and full use of machinery or production lines.

Overtime Work

Employees who work overtime are entitled to additional compensation, unless they hold managerial positions (where exceptions may apply). Overtime is typically paid at the standard hourly rate plus:

- a 50% premium; or
- a 100% premium for overtime worked on Sundays or at night.

Instead of payment, employers may also offer time off in return for overtime hours. If the employer grants the time off, it is calculated as 1.5 hours off for every one hour of overtime. If the employee requests the time off, it is granted on a 1:1 basis.

Part-Time Employees

Employees working part-time are subject to the same working time regulations as full-time employees. In the case of part-time employment, the employer is required to define in the employment contract

the maximum number of additional working hours, beyond which the employee becomes entitled to over-time compensation.

1.4 Compensation

Minimum Wage

In Poland, the minimum wage is set annually by the government – no later than September 15th of the preceding year. Unlike in recent years, in 2025 the minimum wage has increased only once, starting on 1 January 2025, and has remained unchanged throughout the year. In 2025, the monthly gross minimum wage is PLN4,666, while the gross hourly rate is PLN30.50. Discussions are ongoing as to whether the minimum wage will be increased again in 2026, with proposals expected to be reviewed later in the year during government consultations with social and employer organisations. The government proposes that, starting from 1 January 2026, the minimum wage should be set at PLN4,806 gross, with the minimum hourly rate amounting to PLN31.40 gross.

Bonuses

In practice, many employers implement various motivation systems aimed at encouraging and rewarding employee performance. Common examples include performance bonuses that depend on achieving specific, predefined goals. Additionally, employees may receive special awards for outstanding achievements. Some companies go even further, offering more sophisticated incentive programmes, such as granting company shares to their staff. This approach helps employees feel more involved and personally invested in the company's success, fostering a stronger sense of commitment and teamwork.

13th Month

The 13th salary is most commonly granted in the public sector, particularly for professions such as miners, policemen and teachers. This additional payment serves as a form of financial recognition and motivation, helping to reward employees for their work and encourage retention in these often demanding roles.

1.5 Other Employment Terms

Vacation Pay

Employees are entitled to 20 or 26 days of paid annual leave, depending on their length of service. Vacation

pay generally corresponds to their regular salary. When calculating holiday pay, both fixed salary elements and variable components (such as bonuses) must be included. The detailed rules for calculating this amount are specified in the Ordinance issued by the Minister of Labour and Social Policy.

Leave

In Poland, employees are entitled to various types of paid leave related to significant life events and circumstances – for example, as follows.

- Maternity leave – female employees are entitled to 20 weeks of maternity leave, with full pay covered by social security benefits.
- Parental leave – employees who are parents are entitled to parental leave to care for their child, typically for up to 41 weeks. Both parents may take parental leave simultaneously; however, the total combined duration of their leave must not exceed the overall entitlement.
- Sick leave – employees are entitled to sick leave. For the first 33 days of sickness, employees receive paid sick leave financed by the employer (for employees aged 50 and over, this period is limited to the first 14 days), which amounts to 80% of their average monthly salary. After this period, sickness benefits are typically paid by the Social Insurance Institution.

The EU Work-Life Balance Directive, implemented into the Polish legal system in 2023, introduced additional employee rights and measures aimed at helping working parents better balance their professional and family lives. These include provisions such as leave for reasons of force majeure and other family-related entitlements designed to support employees in managing their work and personal responsibilities.

Employee Liability

Employee liability covers several types, including:

- liability for breaches of work duties;
- material liability related to damages caused to the employer; and
- liability for entrusted property (where the employee is responsible for assets assigned by the employer).

Generally, an employee's financial responsibility for damages to the employer is capped at the equivalent of three months' salary. However, this limitation does not apply if the damage was intentional; in such cases, the employee may be held fully liable. These liability rules are only valid during the period of employment. Additionally, employment contracts cannot include clauses that impose contractual penalties for violations of employee duties during the term of employment. However, such penalties may still be imposed for breaches of obligations that continue after employment ends, such as non-compete clauses or confidentiality agreements.

2. Restrictive Covenants

2.1 Non-Competes

Non-Competes in Employment Contracts

In 2023, amendments to the Polish Labour Code introduced a general ban on exclusivity clauses, meaning that employers cannot prevent employees from taking up additional jobs or professional activities, unless such work is competitive in nature. Restrictions related to competition remain permissible under specific conditions.

To be valid, a non-compete clause must be agreed upon with the employee – either as part of the employment contract or in a separate agreement. It may apply during employment and, where applicable, after the contract ends. For post-termination restrictions, the agreement must define both the duration of the restriction and the compensation due to the employee for compliance.

The statutory minimum for such compensation is 25% of the employee's previous salary (including selected bonuses), paid over the period of the restriction. However, in practice – especially for senior or strategic roles – employers often offer higher rates, typically between 50% and 100% of prior earnings.

To maintain flexibility and manage costs, it is recommended that non-compete agreements include provisions allowing the employer to unilaterally release the former employee from the restriction – either by withdrawing from or terminating the clause with prior

notice. This prevents unnecessary compensation payments if the employer no longer sees value in enforcing the restriction.

Non-Competes in Civil Law Contracts

When non-compete clauses are included in civil law contracts (eg, B2B contracts), there is no statutory obligation to provide compensation. However, court rulings vary, and some decisions suggest that the absence of compensation could make such clauses unenforceable if deemed contrary to principles of social fairness.

2.2 Non-Solicits

Non-Solicits in Employment Contracts

Although the issue of non-solicitation is not regulated by the Polish Labour Code, in practice employers conclude relevant agreements with employees containing this clause. The issue of non-solicitation is regulated by the Act of 16 April 1993 on combating unfair competition.

An act of unfair competition in this regard is:

- inducing a person performing work for an entrepreneur, on the basis of an employment relationship or other legal relationship, to fail to perform or improperly perform their employee obligations or other contractual obligations, in order to gain an advantage for themselves or third parties or to harm the entrepreneur; or
- inducing the entrepreneur's customers or other persons to terminate a contract with them or to fail to perform or improperly perform a contract in order to gain an advantage for oneself or third parties or to harm the entrepreneur.

Inducement is behaviour by an employee aimed at achieving a specific result and directed at an individual addressee or addressees. As a rule, therefore, incitement to disregard contracts concluded with the entrepreneur that is addressed to the general public is not considered inducement.

Non-Solicits in Civil Law Contracts

A non-solicitation clause may also be included in civil law contracts – eg, commission contracts or B2B contracts.

3. Data Privacy

3.1 Data Privacy Law and Employment Scope of Personal Data Processed by the Employer

Pursuant to Article 22 paragraph 1 of the Labour Code, the employer shall request the job applicant to provide personal data, including:

- first name(s) and surname;
- date of birth;
- contact details;
- education;
- professional qualifications; and
- employment history.

If the person is hired, the employer shall additionally request the employee to provide personal data, including:

- address of residence;
- personal identification number or type and number of identity document;
- other personal data of the employee, as well as personal data of the employee's children and other members of their immediate family, if the provision of such data is necessary due to the employee's use of parental rights;
- education and employment history, if there was no basis for requesting them at the recruitment stage; and
- bank account number, if the employee has not submitted a request for payment of remuneration in cash.

Information Clause

When collecting personal data from an employee, the employer should fulfil the obligations arising from the General Data Protection Regulation (GDPR), including providing the employee with the information referred to in Article 13 of the GDPR, such as:

- the employer's identity and contact details;
- where applicable, the contact details of the data protection officer;
- the purposes of the processing of personal data and the legal basis for the processing;

- information about the recipients of the personal data; and
- information about the intention to transfer personal data to a third country or international organisation.

In addition to the information referred to in the points above, the employer should also provide (among other things):

- information on the data retention period; and
- information on the employee's rights relating to the processing of personal data, including the right to file a complaint with a supervisory authority for a breach of personal data protection.

4. Foreign Workers

4.1 Limitations on Foreign Workers

The Polish labour market is open to foreigners. As a rule, specific requirements regarding access to the Polish labour market apply to third-country nationals. Third-country nationals are defined as foreigners who do not hold citizenship of any of the following:

- the European Union;
- the European Economic Area; or
- the United Kingdom of Great Britain and Northern Ireland (if the agreement on withdrawal from the European Union applies to them).

From the point of view of an employer who intends to hire a foreigner (a third-country national), it is important to note that in general a foreigner may legally work in Poland if:

- they have the appropriate work permit or a declaration of entrusting work to a foreigner entered in the register of declarations; and
- they are entitled to stay in the territory of the Republic of Poland on the basis of a valid residence permit.

The above is a general rule concerning employment in Poland. There are also exceptions where it is not necessary to obtain a work permit or a declaration of entrusting work.

Details of the formal requirements are set out in **4.2 Registration Requirements for Foreign Workers**.

4.2 Registration Requirements for Foreign Workers

Recently, work has been carried out in Poland regarding changes to the regulations concerning the employment of foreigners. As a result, the Act of 20 March 2025 on the conditions for the admissibility of entrusting work to foreigners on the territory of the Republic of Poland – which regulates this issue – was passed. The Act entered into force on 1 June 2025.

Work Permits

Depending on the form of work that a foreigner will perform in Poland, there are different types of work permits:

- for the purpose of performing work in Poland on the basis of a contract with a Polish entity or, possibly, on the basis of a contract with a temporary employment agency;
- for the purpose of performing functions on the management board of a legal person or a capital company in organisation, or representing a limited partnership or a limited joint-stock partnership – or managing the affairs of such a company or performing the function of a proxy;
- for the purpose of performing work in Poland as part of a posting from a foreign entity; and
- for the purpose of performing seasonal work.

The application for a work permit is submitted by the entity entrusting the work (employer) and addressed to the provincial governor. The application must be submitted via the ICT system (praca.gov.pl). The specific elements of the work permit application may depend on the type of work permit. The scope of information and documents required to be submitted with the application may vary depending on the practice adopted by the office processing the application. Experience also shows that the waiting time for a work permit may vary depending on the location of the office and the number of applications received. In Warsaw, this procedure usually takes several months.

Declaration on Entrusting Work to a Foreigner

A declaration on entrusting work to a foreigner is the basis for entrusting work if the foreigner is a citizen of Armenia, Belarus, Georgia, Moldova or Ukraine and will perform work in the territory of the Republic of Poland on the basis of a contract with a Polish entity entrusting work to a foreigner or, alternatively, on the basis of a contract with a temporary employment agency. It is also necessary to meet the conditions specified in the regulations regarding the type of work entrusted and its duration. In such a case, the employer is not required to obtain a work permit but submits a declaration of entrusting work to a foreigner to the district administrator via an ICT system (praca.gov.pl). If the conditions are met and the employer is able to submit a declaration on entrusting work to a foreigner, it is possible to legalise the foreigner's work more quickly.

Legalisation of Residence

It should be remembered that, in addition to legalising work, it is also necessary for a foreigner to obtain a valid residence title. According to the regulations, the employer requires the foreigner to present a valid document entitling them to stay in the territory of the Republic of Poland before starting work. The foreigner submits the application and documents necessary to obtain a visa in person at the Polish consulate. In practice, the entire procedure related to a foreigner's employment in Poland should generally begin with obtaining a work permit/declaration of entrusting work to a foreigner entered in the register of declarations.

5. New Work

5.1 Mobile Work

In response to the needs that arose in connection with the COVID-19 pandemic, since April 2023, the Polish Labour Code has regulated the rules for remote work.

Features of Remote Work

Work may be performed entirely or partially (eg, two days a week) remotely.

The place of remote work is indicated by the employee (it may be their place of residence) and must be agreed with the employer.

The results of the employee's work are usually communicated by means of remote communication – eg, telephone, email.

Ordered Remote Work

Ordered remote work may be performed on an employer's instructions:

- during the period of a state of emergency, epidemic threat or epidemic, and within three months after their revocation; and
- during the period in which it is temporarily not possible for the employer to provide safe and healthy working conditions at the employee's current workplace due to force majeure – eg, during a natural disaster.

Occasional Remote Work

Remote work may be performed occasionally at the request of an employee in paper or electronic form in an amount not exceeding 24 days in a calendar year.

Agreed Remote Work

The most common basis for remote work is an agreement between an employer and an employee, which may be made either when concluding the employment contract or during the course of employment. An agreement on remote work when concluding an employment contract should be made in writing, while an agreement during the course of employment may be made in paper or electronic form – eg, by email or text message.

Employer's Obligations

In connection with remote work, an employer is generally obliged to:

- define the rules for remote work, as well as the requirements for information security and protection and the procedures related to personal data protection;
- implement occupational health and safety requirements to the extent resulting from the type and conditions of work performed;
- provide the employee with work materials and tools, installation, service, maintenance of work tools, and the training and technical assistance necessary to perform remote work; and

- cover costs directly related to remote work – eg, electricity or internet costs.

It is important to note that, in the case of occasional remote work, the above obligations do not apply, except for those related to occupational health and safety and personal data protection procedures. However, it is recommended to also regulate the rules for performing remote work in the case of occasional remote work.

5.2 Sabbaticals

General Rule

In general, the Polish Labour Code does not regulate sabbatical leave – understood as longer, paid leave for employees to rest, travel, engage in activities outside their usual work, or for personal development.

If employees need a longer break from work, they can take:

- training leave when improving their professional skills; and
- unpaid leave in other cases.

Improving Professional Qualifications

The Polish Labour Code regulates the improvement of professional qualifications by employees. Improving professional qualifications means acquiring or supplementing knowledge and skills by an employee.

Employee Rights

These include:

- the right to training leave or time off from part or all of the working day to attend classes while retaining the right to remuneration – if an employer initiates the improvement of qualifications by an employee or agrees to the improvement of professional qualifications; and
- the right to unpaid leave or exemption from all or part of the working day without the right to remuneration – if an employee improves their professional qualifications on their own initiative.

Unpaid Leave

On the written request of an employee, an employer may grant unpaid leave to such employee. The period

of unpaid leave shall not be included in the period of work on which employees' rights depend.

5.3 Other New Manifestations

Co-Working

In practice, it is increasingly common to work in a co-working space rented by an employer. This solution is used by employers whose employees mostly work remotely from home and who do not have their own office in a given city. In order to enable team meetings and team integration, employers decide to rent shared spaces where employees meet from time to time.

Polish Regulations

There are no contraindications under Polish law to using this solution. The co-working centre in question should be treated as an "extension" of an employer's office. Therefore, particular attention should be paid to proper definition of the place of work or place of remote work.

6. Collective Relations

6.1 Unions

Trade Unions as Representatives of Employee Rights

A trade union is a voluntary and self-governing organisation of workers, established to represent and defend their rights and professional and social interests.

Labour law provisions grant numerous rights to trade unions. Trade unions not only represent the rights and interests of their members in individual labour law matters but also represent all employees of a given employer in matters of collective rights and interests, regardless of whether a particular employee is a member of a trade union.

Collective Interests

In the case of collective employee rights, trade unions play an important role in negotiating collective labour agreements with the employer, which determine the terms of remuneration and other important working conditions in a given workplace. In addition, the employer should agree with the trade unions on the content of internal regulations, such as the remuneration regulations, work regulations or social benefits

fund regulations. Trade unions also perform a supervisory function, monitoring the employer's compliance with labour law and health and safety regulations. Trade unions may report any irregularities they find to the relevant authorities, primarily the National Labour Inspectorate.

Individual Matters

Trade unions also actively participate in representing employees in their individual cases. The employer should consult the trade union about the termination of the employment contract when dismissing an employee represented by the union. In addition, trade union representatives may represent their members in court proceedings against the employer.

6.2 Employee Representative Bodies

Trade Union

The most common institution that represents the interests of employees before their employer is a trade union. It is established by a resolution adopted by at least ten persons. These persons should adopt the statutes and elect a founding committee consisting of three to seven persons.

A trade union is subject to registration in the National Court Register – the founding committee should submit an application for registration within 30 days of adopting the resolution on the establishment of the union. If this deadline is exceeded, the resolution becomes invalid.

Works Council

Another form of employee representation is a works council, which may be established at employers that conduct business activities and that employ at least 50 employees.

Elections of works council members are organised by the employer at the written request of a group of at least 10% of employees.

The term of office of the works council is four years. The purpose of the council is to provide information on:

- the employer's activities and economic situation, and any anticipated changes in this regard;

- the state, structure and anticipated changes in employment; and
- measures that may cause significant changes in the organisation of work or the basis of employment.

In the matters referred to in the second and third points above, the employer should carry out consultations with the works council.

European Works Councils

European Works Councils may be established in Community-scale companies and groups of companies, meaning an undertaking or group of undertakings that employs at least 1,000 employees in the member states of the EU, including at least 150 employees in at least two member states of the EU.

First, a special negotiating body is set up to negotiate an agreement with the central management body of the company on the establishment of a European Works Council. In particular, the agreement specifies the composition of the European Works Council, its powers and the manner in which it is to be informed or consulted.

In a workplace based in Poland, the members of the special negotiating body, as well as of the European Works Council, are appointed by representative trade union organisations operating in that workplace; in the absence of such organisations, they are elected by the employees in a secret and direct ballot.

The term of office of the European Works Council is four years. The European Works Council is entitled to obtain information and conduct consultations concerning a Community-scale company or group of companies.

6.3 Collective Bargaining Agreements

The Role of Collective Bargaining Agreements

A collective bargaining agreement is a type of agreement that regulates the terms and conditions of remuneration for employees. It may also specify other important terms and conditions of employment, such as working time or the broadly understood organisation of work.

The agreement is a source of labour law, which means that the working conditions resulting from the agreement are directly applicable to the situation of an individual employee. However, the provisions of a collective agreement cannot be less favourable than the provisions of the Labour Code and other laws.

Collective agreements can be divided into two types – ie, company agreements and inter-company agreements. A company agreement is concluded by a specific employer with the trade unions operating at that company. An inter-company agreement may be concluded by an employer organisation body, on behalf of the employers affiliated to that organisation, with the competent body of an inter-company trade union organisation, which is understood to mean a national trade union, an association of trade unions or a national inter-union organisation.

The Conclusion and Registration of Collective Bargaining Agreements

The collective bargaining agreement shall be concluded through negotiations, which should be conducted in good faith. It may be concluded for a definite or indefinite period.

The agreement shall enter into force subject to its entry in the register kept for:

- inter-company agreements – by the minister responsible for labour; and
- company agreements – by the competent district labour inspector.

New Collective Bargaining Agreement Act

The Council of Ministers has adopted the draft of a new collective bargaining agreement act, which will be submitted to parliament. The draft provides (among other things) for:

- the possibility of a mediator participating in negotiations;
- a simpler procedure for registering the agreement (notification to a special register in electronic form); and
- the possibility for judicial review of the compliance of the provisions of the agreement with labour law.

The aim of the draft is to popularise collective agreements among employers and employees.

7. Termination

7.1 Grounds for Termination

The Obligation to Specify the Reason for Termination of the Contract

The regulations require the employer to specify the reason for termination by notice of a fixed-term employment contract and an indefinite-term contract, as well as the reason for termination of an employment contract without notice. The employer should indicate the reason for dismissal to the employee in writing. The dismissal should be justified at the time of submitting a statement of termination to the employee.

Only in the case of a probationary contract may the employer terminate such a contract without indicating the reason in the notice of termination.

However, the reasons justifying the termination notice or termination without notice of any employment contract, including a probationary contract, cannot be (for example):

- the employee's request to change the type of employment contract (this request does not apply to probationary contracts);
- the employee's simultaneous employment with another employer;
- the employee's request for information about the terms and conditions of employment; and
- the exercise of rights related to participation in mandatory training.

If the employee believes that the reason for terminating the probationary contract was one of the reasons indicated in the last three points above, they may submit a request to the employer to indicate the reason for terminating the contract.

Dismissal for Reasons Not Related to the Employee

The reasons for terminating an employment contract can be divided into those related to the employee and those not related to the employee.

As regards employers that employ at least 20 employees, a dismissal is considered a so-called collective dismissal if, within a period not exceeding 30 days, the dismissal covers:

- 10 employees, where the employer employs fewer than 100 employees;
- 10% of employees, if the employer employs at least 100 but fewer than 300 employees; or
- 30 employees, if the employer employs at least 300 or more employees.

In such cases, the employer should inform the trade unions operating at the company, as well as the local employment office, of its intention to carry out such redundancies. The employer should then consult with the trade unions on the redundancies, or, in the absence of trade unions, with employee representatives selected in accordance with the procedure adopted by the employer. The employer should conclude an agreement with the trade unions regulating the detailed rules for collective redundancies. In the absence of an agreement with the trade unions, as well as in the case of employers where there are no trade unions, regulations on collective redundancies should be issued.

In the event of collective redundancies, employees are entitled to additional severance pay amounting to between one and three months' salary, depending on their length of service with the employer.

7.2 Notice Periods

Types of Notice Periods

The provisions of the Labour Code provide for different notice periods depending on the type of employment contract or the employee's length of service with the employer.

In the case of a probationary contract, the notice period is:

- three working days, if the trial period does not exceed two weeks;
- one week, if the probationary period is longer than two weeks; and
- two weeks, if the probationary period is three months.

In the case of a fixed-term contract and an indefinite contract, the notice period depends on the employee's length of service with the employer, and is as follows:

- two weeks, if the employee has been employed for less than six months;
- one month, if the employee has been employed for at least six months; and
- three months, if the employee has been employed for at least three years.

If the termination of a fixed-term or indefinite contract is due to the employer's bankruptcy or liquidation, or for other reasons not related to the employees, the employer may shorten the three-month notice period to a maximum of one month.

Obligation to Consult on the Termination of the Contract

When the termination of a fixed-term or indefinite contract concerns an employee represented by a trade union, the employer is obliged to notify the trade union in writing of the reason for the termination of the contract. The trade union may submit its opinion within five days, but it is not binding on the employer.

With regard to employees covered by special employment protection (such as activists designated by a trade union resolution or employees who are municipal councillors), the employer should obtain the consent of the relevant entity or authority to terminate the contract with the employee. Termination of the contract despite the lack of consent may result in the labour court awarding compensation to the employee or reinstating them to their job.

During the notice period, the employee retains all rights arising from the employment relationship. However, the employer may release the employee from the obligation to perform work during the notice period, while retaining the right to remuneration. In addition to remuneration, an employee may be entitled to severance pay if the dismissal is for reasons not related to the employee.

7.3 Dismissal for (Serious) Cause Termination of the Contract Without Notice

In exceptional cases, the employer has the right to terminate the employment contract without notice. In such a case, the employment relationship is terminated immediately – ie, on the day when the employer effectively submits a statement of termination to the employee.

Termination of the employment contract without notice due to the employee's fault may take place in the event of:

- a serious breach by the employee of their basic employment obligations;
- the employee committing a crime during the term of the employment contract which makes it impossible to continue employing them in their position, if the crime is obvious or has been established by a final judgment; and
- the employee's loss of the qualifications necessary to perform the work in their position.

Termination of the contract without notice should take place within one month of the employer becoming aware of the circumstances justifying disciplinary termination. Exceeding this deadline may result in the court awarding compensation to the employee or deciding to reinstate them to their job.

The employer is required to notify the trade union representing the employee of the reason for the termination. The organisation has three days to provide the employer with its opinion, which is not binding on the employer.

Immediate termination of the contract may also occur in situations not attributable to the employee, such as long-term illness or other justified absence.

7.4 Termination Agreements Possibility to Conclude a Termination Agreement

One of the permissible ways to terminate an employment relationship is to conclude a termination agreement.

The provisions of the Labour Code do not regulate this method of terminating an employment contract.

The parties are free to determine the date of termination of the contract, which may fall on the date of conclusion of the agreement or after a certain period of time. In the agreement, in addition to the standard remuneration resulting from the performance of work, the employer may grant the employee additional cash benefits. This is a fairly common practice aimed at amicably terminating the employment relationship and avoiding potential legal proceedings between the employer and the employee.

In the termination agreement, the parties may decide that, until the date of termination of the contract, the employee will be exempt from the obligation to perform work, while retaining the right to remuneration. In addition, the parties may regulate a number of other issues, such as the date and manner of returning company equipment, settlement of business expenses, or maintaining the confidentiality of information related to the employer.

The termination agreement must comply with mandatory provisions of labour law. The most important regulation in this regard is the prohibition on an employee waiving remuneration for work already performed.

An important difference between a termination agreement and a termination notice is that there is no requirement to indicate the reason for the termination in the agreement, and the employee cannot appeal against the termination agreement to the labour court. However, the general rules on the declarations of will, resulting from the Civil Code, apply to termination agreements. Therefore, if the agreement was concluded under the influence of an error or threat on the part of the employer, the employee may revoke the effects of their declaration of will – in such a case, the termination agreement will be considered not to have been concluded.

7.5 Protected Categories of Employee Employees Protected Against Dismissal

The employer may not terminate the employment contract of an employee who is less than four years away from reaching retirement age. In addition, the employee is protected from dismissal during leave and other justified absences from work if the period allowing

the employer to terminate the employment contract without notice has not yet been reached.

The cases of protection against dismissal described above do not apply in the event of the employer's bankruptcy or liquidation. The employer may also terminate the employment contract without notice due to the employee's fault.

In addition, the Labour Code provides broad protection of the employment relationship for pregnant employees and employees exercising parental rights. During pregnancy, as well as from the date of the employee's request for maternity leave, paternity leave or parental leave (for example), the employer may not:

- make preparations to terminate – by or without notice – the employment relationship; and
- terminate the employment relationship.

The employee is entitled to protection until the end of the relevant leave.

During this period, the employer may terminate the employment contract without notice due to the employee's fault, if the trade union representing the employee has agreed to the termination. Moreover, the contract may be terminated by notice only in the event of the employer's bankruptcy or liquidation.

In addition, the law provides for special employment protection for certain groups of employees. For example, an employer may not terminate the employment contract of a trade union activist who is covered by employment protection on the basis of a resolution of that union without its consent. Similarly, an employer may not terminate the employment contract of a member of the works council without the consent of that council. A violation by the employer of the requirement to obtain the consent of the relevant entity may result in the labour court awarding compensation to the employee or reinstating them to their job.

Furthermore, if an employee under special protection appeals to the court against the termination with or without notice, they may request that the court grant security by ordering the continued employment of the employee by the employer until the proceedings have

become final. As a rule, the court is obliged to grant such security. In this way, employees under special protection are guaranteed employment for the duration of the proceedings, which may last up to several years.

8. Disputes

8.1 Wrongful Dismissal

Wrongful Termination of Employment Contracts

Pursuant to the Polish Labour Code, an employee may appeal against a termination of an employment contract to a labour court within 21 days of a date of delivery of a letter terminating the employment contract.

The labour court may decide that the termination of a fixed-term employment contract or an indefinite employment contract is unjustified (if the reason for termination cannot constitute grounds for termination of the employment contract, is untrue or is vague) or violates the provisions on the termination of employment contracts (the employer violated formal requirements – eg, the obligation to submit a written notice). Depending on the employee's claim, it is possible to:

- declare the termination ineffective or reinstate the employee to work under the previous terms and conditions; and
- award compensation.

If termination of a probationary employment contract was in violation of the provisions on the termination of such contracts, the employee is only entitled to compensation.

Wrongful Termination of Employment Contract Without Notice

Pursuant to the Labour Code, an employee has the right to file a claim with a labour court within 21 days of receiving notice of termination of an employment contract, without notice, demanding reinstatement or compensation.

The court will grant the employee's request for reinstatement or compensation if the employee's employment contract was terminated without notice in viola-

tion of the provisions on termination of employment contracts in this manner.

Remuneration for Period of Unemployment

If an employee demands reinstatement instead of compensation, they may also claim remuneration for the period of unemployment.

Amount of Compensation

In general, the amount of compensation depends on the length of an employee's notice period. This applies both to compensation awarded in connection with an appeal against dismissal and in the event of termination of the employment contract without notice.

Motion Requesting Security for a Claim

Pursuant to the Polish Code of Civil Procedure, employees who are subject to special protection against termination of employment with or without notice, and who are seeking recognition of the termination of employment as ineffective or reinstatement to work, at any stage of the proceedings, may request security by ordering the employer to continue their employment until the proceedings are legally concluded. This means that a specially protected trade union activist may "return" to work for the duration of the proceedings in the labour court.

8.2 Anti-Discrimination

Non-Discrimination

According to the Polish Labour Code, employees shall be treated equally as regards:

- the establishment and termination of employment relationships;
- the conditions of employment; and
- promotion and access to training in order to raise occupational qualifications.

This is particularly regardless of:

- sex;
- age;
- disability;
- race;
- religion;
- nationality;
- political views;

- trade union membership;
- ethnic origin;
- religious convictions;
- sexual orientation; and
- the fact of being employed for a definite or an indefinite period, or on a full-time or part-time basis.

It is assumed that the list of grounds for discrimination is open-ended. In practice, this means that an employer may discriminate on grounds not listed in the Labour Code if they treat an employee unequally by taking into account a particularly harmful and unacceptable criterion.

Claims

A person against whom an employer has violated the principle of equal treatment in employment is entitled to compensation in an amount not lower than the minimum wage. Claims may be brought not only by employees but also by persons who have been refused employment or whose employment relationship has been terminated – ie, persons who have not acquired or have lost their employee status.

Burden of Proof

In cases where an allegation of discrimination is raised, the general rule is changed, and the burden of proof is reversed. As a result, an employer may dismiss an allegation of discrimination if they can demonstrate that they were guided by objective and justified considerations when making certain decisions – ie, that the decision, criterion or action they applied is not prohibited by law, and that the purpose of differentiating between employees and job applicants is based on criteria accepted by law.

8.3 Digitalisation

The level of digitalisation of Polish courts is low; moreover, Polish law does not contain specific provisions dedicated solely to the digitalisation of employment disputes. Instead, the general rules applicable to virtual proceedings in other branches of law also govern labour cases. In response to the challenges posed by the COVID-19 pandemic, Polish courts implemented the option of holding hearings remotely, including witness testimonies via video link. Although initially introduced as a temporary solution, remote hearings have

since become a permanent feature of judicial practice and are now widely used in employment litigation.

9. Dispute Resolution

9.1 Litigation

Labour Courts

In Poland, there are specialised employment forums known as labour courts (*sądy pracy*) that handle employment-related disputes. These labour courts are part of the ordinary court system but have dedicated labour law departments. They address individual claims such as unfair dismissal, overdue wage disputes, working conditions, discrimination, mobbing and workplace accidents.

Cases typically start in the district labour court and can be appealed to higher courts, including the regional labour court and, in limited cases, the Supreme Court.

Class Actions

Poland does not have a widely developed system for employment-related class actions, as found in some other jurisdictions. Employment disputes are mainly resolved through individual claims at labour courts. The available legal framework emphasises individual employee claims rather than collective class action lawsuits.

Representation

In both first and second-instance proceedings in employment-related cases, parties have the option to represent themselves. Employees may also be represented by individuals such as trade union officials and labour inspectors. However, this type of representation is rarely used in practice. In most cases, both employees and employers choose to be represented by legal professionals, advocates or attorneys-at-law. Legal representation becomes mandatory only in cassation proceedings (*skarga kasacyjna*) before the Supreme Court.

9.2 Alternative Dispute Resolution

Arbitration

While arbitration is legally possible, it is less common than labour court proceedings for individual employment claims. Arbitration is more frequently utilised

for disputes involving companies or collective agreements where parties have negotiated arbitration clauses.

Mediation

Notwithstanding the foregoing, mediation is an effective and increasingly used method for resolving employment disputes. Mediation in labour disputes is a voluntary (at every stage of the mediation) and confidential process facilitated by a neutral third party (mediator) who helps the parties reach a mutually beneficial agreement. The key principles of mediation include voluntary participation, confidentiality, impartiality of the mediator, and a focus on flexible, creative solutions.

9.3 Costs

Court Fees for Employees

Starting from 29 September 2023, individuals bringing employment-related claims in Poland no longer need to pay court fees, regardless of the claim's amount.

Previously, a fee was required for claims exceeding PLN50,000, calculated as 5% of the claim's value. This change – removing all court fees for employment disputes – has contributed to a noticeable rise in the number of such cases being filed.

Attorney's Fees

In Poland, the party that prevails in labour court proceedings – whether an employee or an employer – may be entitled to reimbursement of legal costs, as determined by the court. Typically, the losing party is required to cover the winning party's statutory court fees, fixed legal representation costs, and any reasonable, documented expenses associated with the case.

It is important to note that attorney's fees are awarded based on statutory rates set by law, rather than the actual costs incurred. As a result, the compensation granted often represents only a portion of the true legal expenses. In rare and exceptional cases, the court may grant reimbursement exceeding these statutory limits, but such outcomes are uncommon.



Law and Practice

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Colab, a network of law firms with which it maintains cultural and strategic ties across Portugal and other countries. **PLMJ Colab** strives to maximise the use of resources and deliver effective solutions to its clients' international challenges, regardless of where they are located. The firm works closely with law firms competent in the legal systems and cultures of Angola, China/Macao, Guinea-Bissau, Mozambique, São Tome and Príncipe and Timor-Leste.

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1. Employment Terms

1.1 Employee Status

There is no legal distinction between blue-collar and white-collar workers as employment law does not include any classification of workers, although specific provisions or protection are applicable to:

- workers employed on fixed-term contracts;
- part-time workers;
- young workers; and
- working students.

Categories of worker based on the different duties and responsibilities are usually set by collective agreements.

1.2 Employment Contracts

An employment contract is a contract whereby a person undertakes, in return for payment, to work for another person or other persons under their authority and direction. Offer and acceptance are traditional elements of contract formation and are rarely a source of disagreement. The acceptance of an offer may be implied (notably by performance) or expressed.

Employment contracts are not subject to any special form unless otherwise provided for by law. However, the following contracts, among others, must be made in writing:

- promissory employment contracts;
- fixed-term employment contracts;
- employment contracts for foreign workers save as otherwise provided by law;
- employment contracts for high management positions (service commission);
- secondment agreements;
- multiple employer employment contracts;
- part-time employment contracts;
- early retirement contracts; and
- contracts to loan labour.

Terms and conditions of employment need not be expressly agreed and are governed by statutory provisions, collective agreements, work regulations or established practices.

1.3 Working Hours

Maximum Working Hours

Regular working hours may not be more than eight hours per day or 40 hours per week.

Flexible Arrangements

Average working hours rules

By collective agreements, regular working time may be defined as an average, within a reference period. In this case, the limits on working hours may be increased by a maximum of four hours, provided the weekly working time does not exceed 60 hours, not including overtime worked for reasons of force majeure. The average working time is calculated by reference to the period established in the applicable collective agreement, but cannot exceed 12 months, or, if the agreement makes no such provision, by reference to periods of no more than four months.

Exemption from the working hours rules

The exemption from working hours rules may be applicable to some specific jobs, such as managerial positions and commercial jobs, as well as to employees working remotely. A proper written agreement is legally required (this agreement can be part of the employment contract, as recommended).

Employees exempt from the working hours rules are entitled to an additional pay equivalent to no less than one overtime hour per day (general law). The additional pay can be paid separately or included in the monthly remuneration – in the latter case, this has to be specifically addressed in the written agreement (or in the employment contract).

Other flexible arrangements can also be set out in collective bargaining agreements.

Part-time contracts

A proper written contract is legally required and must contain certain minimum terms. The normal weekly working period is shorter than the one worked by full-time employees. This reduction can be achieved:

- by reducing the number of working days per week or month; or
- by reducing the daily working time.

Part-time employees are entitled to the same conditions as full-time employees on a pro rata basis, and have the right not to be discriminated against due to their status.

Overtime

Work done over the maximum weekly and daily limits qualifies as overtime. Overtime work is only admissible when requested by the employer if it is needed to face extraordinary circumstances or an increase in workload, or if the work is to prevent or repair damage to assets. However, there are some limits depending on the number of employees and type of contract. A collective bargaining agreement (CBA) may establish higher ceilings.

Overtime work entitles the employee to additional pay. This is a rate of 25%, of the ordinary hour, during the first hour and 37.5% during the following hours on the normal working days; and 50% on public holidays and rest days.

Overtime worked over 100 hours per year is paid at the rate of 50% for the first hour or part thereof and 75% for each additional hour or part thereof worked on a normal working day; and 100% for each hour or part thereof worked on public holidays and rest days.

It also entitles them to time off equivalent to one full day in the case of overtime on a mandatory rest day (usually Sunday). CBAs may establish a more beneficial treatment for the employee.

1.4 Compensation

There is a minimum national salary (EUR870 for 2025) set by law. Collective labour agreements may set out higher salaries in a specific sector, group of companies and/or company.

In Portugal, there are 14 payments, 12 salaries, one holiday bonus and one Christmas bonus. It is optional to pay variable salaries and companies are free to set out their own terms and conditions as long as they ensure that these are objective and non-discriminatory.

1.5 Other Employment Terms

Annual Leave (Holidays)

All employees are entitled to a minimum of 22 working days' annual leave. During the first year of employment, employees are entitled to two working days for each month of the duration of their contract, up to 20 working days, which may be taken after six months' full performance of the contract.

During holiday periods, employees are entitled to their normal monthly remuneration plus a holiday allowance, typically of the same amount.

Parental Leave

Upon the birth of their child, both parents are entitled to initial parental leave of 120 or 150 consecutive days, to be shared between mother and father. The leave can be enjoyed simultaneously by both parents between the 120th and 150th days.

The leave may be increased by 30 days if each of the parents enjoys, exclusively, a period of 30 consecutive days, or two periods of 15 consecutive days, following the mandatory period of six weeks following the childbirth to be enjoyed exclusively by the mother. In the case of multiple births (eg, twins), the duration of the initial parental leave is increased by 30 days for each child beyond the first one.

Fathers are entitled to take parental leave after birth of 28 days (consecutive or in interpolated periods of at least seven days), within 42 days of the birth (seven of which must be taken immediately after the birth). The paternity leave may be extended for seven more days provided it is taken at the same time as the mother's initial parental leave.

During the parental leave, the employer is not obliged to pay remuneration, as the Social Security pays an allowance. This period of leave cannot prejudice the position of the woman concerning any of the remaining entitlements, notably those dependent on attendance at work.

Parents are entitled to extended parental leave, up to three months, to be taken after the initial parental leave. Following this extended leave, parents are also entitled to leave within the first two years of the

child's life to provide assistance to the child. There is no mandatory payment of the employer during these leave periods.

Employees with children under 12 years of age or, irrespective of age, with a disability or chronic illness who live with the employee and who are under their care, and employees with the status of non-formal caregivers, are entitled to work part-time or to work under flexible working hours arrangements.

Sick Leave

Employees are entitled to time off from work for illness or injury, which is paid by the Portuguese Social Security protection schemes, provided they meet all the eligibility requirements. The Social Security protection schemes pay sick pay to employees who are absent from work as a result of illness or injury. The employee can receive sick pay for a total of 1,095 days. Sick pay is calculated based on the employee's remuneration reference for Social Security purposes and varies between 55% and 75% depending on the period of illness.

The sickness leave suspends the employment contract as of 30 days and has no maximum period. Employees have the obligation to communicate absences due to sickness as soon as possible and may be required to present medical documentation proving the sickness. In some cases, CBAs provide specific rules covering employee illness or injury.

Protection of Confidential Information

During the employment relationship, employees are bound by a confidentiality duty. The parties may also agree upon a confidentiality duty after termination.

2. Restrictive Covenants

2.1 Non-Competes

Portuguese employment law allows restrictive covenants, notably confidentiality, non-competition (and in that context, non-solicitation) and/or minimum stay obligations. The duration of the post-employment non-compete duty cannot exceed two years from the termination of employment.

In cases of employees who hold positions that entail a special level of trust (eg, management positions) or that have access to sensitive information from a competition standpoint, the restricted period can be extended to a maximum of three years. The minimum stay duty can be set at a maximum of three years.

Employees covered by a post-contractual non-compete duty must receive financial compensation during the restricted period. Portuguese law does not set a specific criterion to determine the compensation to be paid during the non-compete period. The Constitutional Court case law follows the understanding that the compensation must be fair, adequate and proportional. This means that the non-compete duty financial compensation must be sufficient to support the employee during the restricted period, taking into account their salary while employed by the company. Although the law leaves the parties some room to establish the time of payment, the purpose of the compensation is to ensure that the employee can obtain a suitable income source during the restricted period. It is therefore recommendable that the payment of the compensation be made on a monthly basis during the restricted period.

If any agreement fails to provide for compensation, or if the compensation is considered insufficient, the agreement will be null and void, and will thus release the employee from complying with it and the employer from paying the compensation. The amount of compensation may be reduced in cases where the employer has expended large sums on the employee's vocational training.

The remedies for a non-compete breach are limited to the possibility of seeking compensation from the former employee. The burden of argument, and the quantification and proof of the damage, falls solely on the former employer. In many cases, it is quite hard to quantify the damage as the value of information is difficult to measure. In addition, it is quite difficult to prove damage that arises as a result of the employee's behaviour. In order to mitigate this risk, it is usual for the parties to agree on a penalty award.

2.2 Non-Solicits

Non-solicitation clauses are null and void under Portuguese employment law. No specific penalty is provided in the law concerning these agreements.

In addition, non-solicitation agreements may also constitute a breach of competition law, as this type of agreement is deemed limiting and disruptive to competition and therefore illicit. Companies may be penalised with fines that may amount up to 10% of the turnover of the company.

3. Data Privacy

3.1 Data Privacy Law and Employment

In Portugal, personal data processing is governed by the General Data Protection Regulation (GDPR) and Law 58/2019 of August 8th, which incorporates the GDPR into Portuguese law. When it comes to employees' personal data, special category data may be collected, processed and used by employers when necessary to meet obligations and exercise rights under employment, social security and social protection law or a CBA.

Portuguese data protection law establishes that the consent given by an employee does not constitute a legitimate legal basis for processing their personal data if such processing results in a legal or economic advantage for the employees, except as otherwise specified by law. However, the Portuguese supervisory authority (the *Comissão Nacional de Proteção de Dados* – CNPD) holds that this provision is not compliant with EU law.

Transfers of personal data to third countries in and outside the EU (including Norway, Liechtenstein and Iceland) are only permitted if the conditions set under the GDPR are met. Furthermore, transfers to third countries (outside Europe) are also permitted if appropriate safeguards (eg, binding corporate rules and standard contractual clauses) are provided by the controller or processor of personal data and only if enforceable rights and effective legal remedies are available for the data subject. In any case, the transfer of personal data must observe the main data quality principles established under the GDPR:

- lawfulness;
- the fairness and transparency principle;
- the purpose limitation principle;
- the data minimisation principle;
- the accuracy principle;
- the storage limitation principle; and
- the integrity and confidentiality principle.

4. Foreign Workers

4.1 Limitations on Foreign Workers

A proper written contract is legally required when hiring foreign employees, except for citizens from the EU or from a state with which there is a treaty between states. This contract can only be executed after the employee has obtained the proper visa and a copy of that visa must be annexed to the contract – this will not prevent a company from signing an offer letter or a promissory employment contract to be effective after the visa is obtained.

4.2 Registration Requirements for Foreign Workers

No specific registration requirements apply.

5. New Work

5.1 Mobile Work

The law allows the full remote working and hybrid regimes (when the employee carries out some days of remote work from their home or co-working space, and on other days works physically on company premises). As a rule, remote work is implemented by written agreement, which shall contain, most notably:

- the place of telework;
- the identification of the owner of any working equipment, as well as responsibility for its installation and maintenance; and
- the terms and periods that the employee should physically attend company premises to work to avoid isolation from the company and their colleagues.

The following categories of employees are entitled to remote work.

- Those with a child aged up to three years or, irrespective of age, who is disabled, chronically ill or suffering from an oncological disease, who lives with them in the same household, and the employer has the resources and means to do so.
- Those with a child aged up to eight years, and the employer has the resources and means to do so (except for micro-company employees), in the following cases:
 - (a) when both parents meet the conditions to exercise the activity in telework, provided that it is exercised by both in successive periods of equal duration within a maximum reference period of 12 months; or
 - (b) single-parent families or situations in which only one of the parents demonstrably meets the conditions to exercise a teleworking activity, and who are victims of domestic violence and have verified the conditions for transfer to another workplace or who have the status of non-formal caregivers.

The capture and use of images, sound, writing or history, or the use of other means of control that may affect an employee's right to privacy, are prohibited.

Powers of direction and control over the provision of remote work are exercised, in principle, by means of the equipment and information and communication systems allocated to the employee's activity, in accordance with procedures previously known by the latter and compatible with respect for their privacy.

The employer is obliged to carry out health examinations at work before the implementation of remote work and, subsequently, annual examinations to assess:

- the employee's physical and mental aptitude to carry out the activity;
- the repercussion of the activity and the conditions in which it is provided on the employee's health; and
- the appropriate preventative measures.

Furthermore, the employer has the duty to evaluate and control the health and safety conditions at work in the place where the employee carries out their activ-

ity, and to ensure that it complies with the health and safety conditions set by law.

5.2 Sabbaticals

Employees are entitled to unpaid leave of over 60 days to attend educational or vocational training. The employer can only refuse to grant such leave in the following cases:

- when, in the previous 24 months, the employee has been given appropriate vocational training or leave for the same purpose;
- in the case of an employee with less than three years of seniority;
- if the employee has not applied for an unpaid leave at least 90 days before it is due to start;
- in the case of a micro or small business and if it is not possible to adequately replace the employee if necessary; and
- in the case of employees performing managerial, supervisory or qualified roles, who cannot be replaced during the leave without causing serious loss to the operation of the business.

Apart from this case, the employee does not have a legal right to take unpaid leave, which means that it will be up to the employer to decide whether or not to grant the unpaid leave.

The unpaid leave determines the suspension of the employment contract. All the rights, duties and guarantees of the parties that do not presuppose the actual provision of work remain in force and the time of suspension is considered for seniority purposes.

5.3 Other New Manifestations

There are no new manifestations to mention for this jurisdiction.

6. Collective Relations

6.1 Unions

Trade union organisations are entitled to the following.

- To negotiate and settle collective labour agreements.

- To provide financial and social services to their members.
- To participate in the drafting of employment laws.
- To represent their affiliated workers at company level and appoint union representatives.
- To participate in dismissal proceedings that concern their affiliated workers.
- To receive information and be consulted about:
 - (a) recent and probable future evolution of the company's activity;
 - (b) probable evolution of employment;
 - (c) any decision that may entail a material change in the work organisation of employment contracts; and
 - (d) participating in company restructuring processes, particularly where training measures or changes in working conditions are planned.

6.2 Employee Representative Bodies

The employees of a company may (although it is not mandatory) take the initiative to set up the following representative bodies.

- Works council – the members are appointed by the employees and their purpose is to represent the interests of the employees of that company. In most companies in Portugal, there is no works council; they are only found in larger companies.
- Union delegates – elected by employees affiliated with a specific union; there can be more than one union with representation in a company.
- Security and health representatives – to supervise issues relating to security and health. They are not common in Portugal.
- European Works Council (EWC).

Representatives of employees are entitled to time off to perform their duties and may convene general meetings of employees either outside or within working hours (in the latter case, for a maximum of 15 hours a year).

Works councils have information and consultation rights, such as:

- the right to obtain information on some matters of relevance for the company/employees;

- the right to consultation on some specific matters of relevance for the employees, as defined by the law, but they do not have the right of veto in respect of any employer's decisions;
- the right to meet periodically with the management; and
- the right to negotiate a collective labour agreement specific to the company, provided that the unions representing the company's employees delegate that power to the works council (this is not common).

6.3 Collective Bargaining Agreements

At the industry level, CBAs are common in almost all sectors. Since CBAs usually provide more favourable employment conditions than the Employment Code, they will prevail. However, there are some specific matters where the law is mandatory and the CBA cannot overrule them. These matters mainly involve termination of employment contracts.

Employment contracts cannot, in principle, provide conditions that are less favourable than the ones established by a CBA. The parties to a collective agreement may agree that a particular provision is one from which there can be no derogation.

7. Termination

7.1 Grounds for Termination

The employer may be entitled to terminate the employment contract by dismissal:

- with just cause;
- on grounds of redundancy; or
- on grounds of failure to adapt.

In addition, during the trial period, either employer or employee may terminate the contract without prior notice (save if the trial period has lasted more than 60 days, in which case the employer must give prior notice of seven days) or just cause. There is no right to any compensation unless otherwise agreed in writing.

Term contracts lapse at the end of their term, provided the employer or the employee respectively notifies the

other in writing of the intention to terminate the contract, 15 or eight days prior to the end of the term.

All methods of termination require compliance with specific procedures provided in the law.

The legal grounds for collective dismissals are as follows:

- definitive closure of the company;
- closure of one or more sections; or
- reduction in staff for structural, technological or market reasons.

If the dismissal is made on the grounds of redundancy, the employer must notify its intention, in writing, to the works council (if there is one) or otherwise to either the inter-union committee or the union committees. The notice must contain:

- the reasons given for the collective dismissal;
- a workforce table, broken down into the company's organisational structures;
- indication of the criteria serving as the basis for selection of the workers to be dismissed;
- the number of workers to be dismissed and occupational categories covered by the dismissal;
- the period of time over which the dismissal is to be made; and
- the method to calculate any redundancy payments to be awarded to the redundant workers, over and above that provided for by law or by collective agreement.

At the same time as the employer notifies the workers, it must also send a copy of the letter and the enclosures to the appropriate department of the ministry responsible for employment that deals with collective employment relationships.

Where there are no workers' representative bodies, the letter must be sent to each of the employees who may be affected by the collective redundancies. Within five business days of the date of receipt of the initial notice, the employees may appoint, from among themselves, a workers' representative committee of no more than three or five members, depending on whether the dismissal will cover up to or more than

five workers. In the 15 days following the date of receipt of the initial notice, the employee and/or the workers' representatives may issue a non-binding opinion about the dismissal and propose alternative measures.

If employment contracts are to be terminated, the company must, within 20 days after the initial notice has been received, inform each of the workers who are affected, in writing, of the decision to proceed with the redundancies, expressly stating the grounds for termination and the date of termination of the employment contract.

7.2 Notice Periods

Only employees who are dismissed on grounds of redundancy or on grounds of failure to adapt must be given notice of termination as follows:

- employees with under one year of service – 15 days;
- employees with between one year and under five years of service – 30 days;
- employees with between five years and under ten years of service – 60 days; or
- employees with ten or more years of service – 75 days.

7.3 Dismissal for (Serious) Cause

Dismissals without just cause are not permitted. In general, any wilful behaviour on the part of the employee, which, given its significance and consequences, makes any continuation of the employment relationship immediately impossible, constitutes just cause for dismissal.

In particular, any of the following conduct by the employee is deemed to constitute just cause for dismissal:

- illegitimate refusal to comply with instructions given by the employer;
- violation of other employees' rights and guarantees;
- regular conflicts with other employees;
- continuously careless or negligent performance of duties;

- damage to significant financial interests of the employer;
- false justification of absence;
- unjustified absence causing any damage or serious risks to the employer or unjustified absence for five consecutive days or ten non-consecutive days per calendar year;
- wilful non-compliance with the rules concerning security or hygiene conditions at work;
- criminal behaviour towards any other employee or officer of the employer;
- non-compliance with or opposition to any judicial or administrative decision; and
- abnormal decrease in the employee's productivity.

In order to dismiss an employee with just cause, the employer has to begin a disciplinary procedure against the employee.

The procedure starts with the employer addressing a written statement of misconduct to the employee containing a full description of the relevant facts, particularly those that may be considered just cause for dismissal. Within ten working days of receipt of this document, the employee may present a written defence and request that the relevant evidence, such as witness statements, be examined. The employer must accede to the requests made in the written defence, or risk the disciplinary procedure being held invalid.

After conclusion of these proceedings, the employer must make a final decision within 30 days. Should the employer's decision be of dismissal, the employer pays no compensation to the employee for the termination of the employment contract, except the legal amounts due for such termination and in respect of the pro rata holiday pay and Christmas bonus due.

7.4 Termination Agreements

Employers and employees may terminate employment contracts by means of a mutual agreement. Termination agreements take the form of a document to be signed by both parties, in two originals, with one to remain with each party. This document should expressly include, at least, the date on which the agreement was signed and the date on which it

is effective. The parties may agree on other effects, provided these are not contrary to the law.

Should the parties agree to the employee being paid overall pecuniary compensation, it is assumed that they have included all the credits having matured on the date of the employment contract termination or being payable in reason thereof.

The effects of employment contract termination agreements may be revoked at the employee's initiative by notice in writing within seven days of the date on which they were signed. The notice of revocation of termination will only take effect if, together with the notice, the employee delivers or in any way places at their employer's disposal the entire amount of the pecuniary compensation possibly paid pursuant to the agreement or by reason of the termination of their employment contract. The revocation notice provisions do not apply to duly dated employment contract termination agreements when the signatures on them have been certified in the presence of a notary.

7.5 Protected Categories of Employee

Any dismissal of pregnant employees, as well as employees who have recently given birth or are breastfeeding and employees with the status of non-formal caregivers, always requires the prior opinion of the equal opportunities authority. If this opinion is not in favour of the dismissal, the employer is only permitted to continue with the dismissal following a court finding of just cause.

In addition, the dismissal of any employee who is a workers' representative is presumed to be made without just cause.

8. Disputes

8.1 Wrongful Dismissal

The employee may apply to the Employment Court for a declaration of unlawfulness of the dismissal. The court should declare the unlawfulness of the dismissal in the following situations:

- failure to follow a procedure prior to the dismissal;

- the dismissal was motivated by political, ideological, ethical or religious grounds;
- absence of cause for termination; or
- invalidity due to non-compliance with the legal requirements.

When a dismissal is declared unlawful, employees are entitled to:

- compensation for financial and personal damage arising from the unlawful dismissal;
- reinstatement without prejudice to their category and length of service; and
- the earnings they did not receive from the time they were dismissed until the time the court decision becomes final.

Any sums they may have received as a result of the termination of their employment contract, which they would not have received were it not for their dismissal (eg, unemployment subsidy), will be deducted from this compensation.

In lieu of reinstatement, employees may choose to receive a compensatory award, the amount of which is established by the courts and is equivalent to between 15 and 45 days of basic pay and length of service payments for each full year or fraction of a year of service.

If companies have a maximum of ten workers, or if the workers are directors or managers, the employer is entitled to oppose reinstatement provided it can justify that the return of these workers would seriously interfere with and prejudice the normal running of the company. The court must assess the grounds alleged by the employer.

8.2 Anti-Discrimination

The grounds for anti-discrimination claims include any direct or indirect discrimination that privileges, benefits, wrongs or deprives of any right or exemption from any duty based notably on ancestry, age, sex, sexual orientation, gender identity, marital status, family situation, economic situation, education level, ori-

gin or social status, genetic heritage, decreased work capacity, handicap, chronic disease, nationality, ethnic origin or race, country of origin, language, religion, political or ideological convictions, or union affiliation.

Employees who seek to enforce discrimination rights may lodge judicial claims. They must indicate the employee with whom they consider themselves to be discriminated against. The employer must prove that the different treatment between the two employees is based on non-discriminatory reasons.

Employees may be entitled to compensation and, to the extent possible, to be placed in an equal position with their colleagues compared with whom they consider themselves to be discriminated against.

8.3 Digitalisation

There are no new regulations with regards to the digitalisation of employment disputes.

9. Dispute Resolution

9.1 Litigation

The Portuguese judicial system has specialised courts specifically dedicated to labour and employment cases. Portuguese law does not specifically allow class action cases related to employment and labour cases. However, unions are entitled to represent their affiliate works in judicial proceedings seeking to defend collective rights of employees.

9.2 Alternative Dispute Resolution

In Portugal, arbitration is currently not possible in employment disputes.

9.3 Costs

Nominal compensation will be awarded to the prevailing party for attorney's fees incurred, to be paid by the non-prevailing party. This compensation corresponds to 50% of the legal fees and other costs associated with the legal action paid by both parties to the court during the judicial procedure.

Trends and Developments

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Eversheds Sutherland

Eversheds Sutherland in Portugal provides strategic, business-focused legal advice to national and international clients. As part of a leading global law firm, its Lisbon office combines deep local knowledge with an international outlook, delivering practical solutions across sectors and jurisdictions. The firm's employment, benefits and pensions team is highly experienced in labour and social security law, and advises on the full employment life cycle – from recruitment to restructuring and litigation. It assists clients with collective bargaining, compliance, executive matters

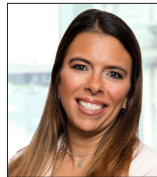
and workforce optimisation. The team also handles collective dismissals and negotiations; due diligence and compliance audits; social security and regulatory inspections; and labour disputes and court proceedings. It is trusted by multinational companies for cross-border employment issues and complex regulatory environments. Known for its proactive and pragmatic approach, the firm also contributes to legal development through client training, publications and speaking engagements. It is committed to delivering responsive, commercially aligned advice.

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PORTUGAL TRENDS AND DEVELOPMENTS

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EVERSHEDS SUTHERLAND

What to Expect From Employment Law in Portugal

A certain stability has been seen in employment legislation since the amendments to the 2023 Labour Code. Following the new political landscape after the elections of May 2025 (which gave right-wing parties greater representation in the Portuguese Parliament), some aspects of employment legislation are expected to be reviewed in the coming years.

As of the date of this article, the government has announced the launch of a package of employment law amendments – of more than a hundred articles of the Labour Code – to be discussed with social partners. Changes are expected in the following topics:

- the extension of the sectors subject to minimum services during strikes;
- the acquisition of additional holiday days by employees;
- the extension of the maximum duration of fixed-term contracts;
- stricter rules to requalify digital platforms workers;
- the qualification of fraudulent self-justified sick leave as grounds for dismissal with cause;
- the return of individual bank of hours;
- the payment of the holiday and Christmas allowances in provisional twelfths;
- changes to the remote working system; and
- the possible extension of the right to refuse reinstatement of an employee in the case of unfair dismissal to all categories of employees.

For now, regulators have been refining the details of the amendments included in 2023, and appeal courts are busy ruling on some of the critical topics brought about by the 2023 amendments, such as platform workers' requalification as employees, pay transparency and harassment.

Furthermore, social aspects such as remote work and the right to disconnect, the entry of immigrants into Portuguese territory and the use of artificial intelligence (AI) in the workplace are having a material impact on how employers need to adapt.

The following sections will provide a high-level overview of these hot topics.

Remote Work and Work-Life Balance: Solution or Illusion?

In a fast-changing society, the search for new balances has become essential. The perception and organisation of time have undergone a transformation – shifting from a homogeneous and continuous concept to one that is increasingly fragmented and discontinuous. Time has become a critical variable in management, with productivity rhythms now dictated by demand and digitalisation. This shift has intensified the conflict between professional responsibilities and personal and family life.

According to the 2023 “Country Health Profile” for Portugal, over 2.25 million people were living with mental health disorders in 2019 – representing 22% of the population, far above the EU average (16.7%). Anxiety disorders were the most common, affecting nearly 9%.

Recognised globally as a key priority, as highlighted in the World Health Organization's 2025 “Guidance on mental health policy and strategic action plans”, mental health is “a vital asset that should be protected and nurtured for individuals and societies to thrive” through national policy and strategic action. In the context of employment, this means recognising the central role of working time in either promoting or undermining well-being.

Although the Portuguese legal framework traditionally grants protection to employees – particularly concerning limits on working time – labour activity is increasingly shaped by digitalisation and collaborative structures, especially through involvement in international teams and projects spanning multiple time zones.

This new reality presents additional challenges. Although there are no legal obstacles preventing employees from disconnecting after working hours, the cultural mindset – such as the idea that a “good” employee is always available – and increasing competition in the labour market remain powerful barriers to genuine disconnection.

In this context, legislative intervention has sought to reform the (innovative) regime introduced by the 2003 Labour Code, adapting it to the demands of the “post-

pandemic” world and introducing measures that seek to balance business needs and employee protection.

In July 2025, the Labour Authority issued an opinion on its understanding regarding the right to disconnect, stressing that only in critical/urgent cases can the employee be contacted by the employer and that, even if no immediate answer is required from the employee, the simple fact that the employee is being contacted out of his/her working hours is a breach of the right to disconnect. It further clearly stated that such a breach of the right to disconnect may be relevant in the wider context of harassment.

The Legal Classification of Platform Work in Portugal: a Shifting Landscape

The classification of labour relationships in Portugal's platform economy has undergone notable judicial development in recent months. Although Article 12-A of the Labour Code introduced a presumption of employment for platform workers, courts have applied it unevenly, gradually shaping a new test of legal subordination suited to the digital age.

A central issue in recent rulings is the possibility of substitution. Where platforms allow couriers to delegate tasks to third parties, courts have often concluded that the relationship lacks the personal element typical of employment contracts. In such cases, the absence of *intuitu personae* has weighed against a finding of legal subordination.

Exclusivity is another contested criterion. Some decisions interpret the ability to work across multiple platforms as a sign of economic and organisational independence, suggesting a service relationship rather than employment. Others have taken a more nuanced view, recognising that formal non-exclusivity may mask real dependence, especially where workers rely on a single platform for most of their income.

The use of geolocation (GPS) tracking has also split judicial opinion. Some courts see it as a neutral logistical tool for optimising deliveries, while others interpret real-time tracking as indirect control comparable to traditional managerial oversight.

These diverging approaches show that the presumption introduced by Article 12-A is far from settled. Portuguese case law is developing incrementally, weighing autonomy against control to determine whether an employment relationship exists. Each case contributes to the evolving legal framework governing platform work, where promises of flexibility increasingly intersect with calls for greater worker protection.

The Moral Harassment Awakening Awareness

Portuguese law provides a robust legal protection for employees claiming moral harassment, leading to an increase in claims and significant consequences for employers. This, coupled with increased awareness and judicial decisions, is driving a cultural and social shift in workplace behaviour.

The definition of moral harassment under the 2023 Labour Code does not require a discrimination factor, but requires a disruption effect to the employee through intimidation, destabilisation or humiliation. Regardless of whether the conduct is perpetrated by a colleague or a manager, the employer remains liable. Courts have required a frequency/regularity of behaviour to conclude that there is harassment; however, an intention of harassment from the author is not required, which gives room to cover behaviours that, in most cases, result from a different individual perception of what is appropriate or not.

In light of this, employers must comply with the following preventative duties:

- approve internal codes of conduct to prevent harassment (if the company has more than seven employees);
- reject any harassment acts; and
- investigate harassment claims and file the correspondent disciplinary process, if there are reasons to do so.

Employees claiming harassment are afforded protections against retaliation, which consists of the following:

- the employer cannot take disciplinary action against the claimant or witnesses in connection

- with the acts or facts surrounding the harassment claim (except if there is a malicious purpose);
- a disciplinary sanction applied to the claimant or witnesses in a harassment claim is deemed abusive; and
- a presumption of an unfair disciplinary sanction (regardless of the conduct originating it) is applied to a claimant of harassment or witnesses in harassment cases up to one year after the claim.

The recognition of moral harassment by a court allows the employee to terminate their contract with cause, and the employer may be liable for the payment of a fine, criminal liability (in limited cases), responsibility for damages and employment-related diseases.

The Impact of AI on Labour Relations

The rise of AI and other digital tools has significantly reshaped labour relations. This shift has required companies and employees to adapt rapidly to technologies such as apps, electronic devices and AI systems, while regulation evolves to address the new challenges.

These developments bring both opportunities and risks. On one hand, AI enhances management through tools that monitor productivity and employee behaviour. On the other, increased oversight raises concerns about privacy, excessive surveillance and declining trust. Moreover, companies also face greater exposure to cyber threats due to the growing value of personal data processed through AI systems.

AI is increasingly used in recruitment processes, but algorithms can introduce bias by discriminating against candidates based on non-professional criteria such as nationality, religion or socio-economic status. Such practices may exclude qualified individuals and reinforce structural inequality.

While automation through AI can also assist employees by simplifying or enhancing their tasks, it may also lead to the replacement of certain roles. The growing use of AI therefore calls for active oversight by governments and employers to ensure a fair and sustainable transition.

At the EU level, the Artificial Intelligence Regulation – adopted on 13 March 2024 and to be transposed by August 2026 – aims to ensure the development of safe, human-centred AI while safeguarding fundamental rights. At the national level, in Portugal, since May 2023, the Labour Code requires employers to inform employees about algorithmic management of access to employment, termination and working conditions. It also allows for more protective collective agreements and reinforces the right to equality when algorithmic decisions are involved.

This challenge is ongoing. A continuous and adaptive response is essential to ensure that the use of algorithms and surveillance preserves employee dignity and keeps digital transformation both ethical and inclusive.

Pay Transparency

In 2023, according to some official research, Portugal recorded a pay gap of 8.6% between men and women, ranking it as the 18th country in Europe where men earn more than women. In 2024, according to non-official research, such gap increased to more than 15%. Directive (EU) 2023/970 of 10 May 2023 was approved in order to overcome this issue in almost all member states.

Once the Directive is transposed, pay transparency rules will be imposed even before the employment agreements come into force, at the time of recruitment. For example, employers will be required to ensure that all job advertisements include the starting salary applicable to that position. For employees, the Directive provides their right to request the average salary level, by gender, for their category.

Although the deadline for transposing this Directive is 7 June 2026, Portugal has already implemented measures to achieve equal pay between men and women:

- Law No 62/2017 of August 1st establishes the system of balanced representation between women and men in management and supervisory boards of public sector entities and listed companies; and
- Law No 60/2018 of August 21st introduced relevant measures, including the availability of reports

showing the pay gap between men and women by companies with 50 or more employees.

The Portuguese labour inspection has been following actions to promote compliance with these rules.

Nevertheless, Portugal still has a long way to go, namely in transposing obligations such as prohibiting employers from asking about a candidate's previous salary.

Member states now have about ten months to implement a range of measures from the Directive. Alongside these commitments for employers, opportunities can also be identified, such as the positive impact of transparency on attracting and retaining top talent, or on strengthening relationships and trust between companies and employees.

Residence Permits: Practical Implications in Employment Contracts

On 3 June 2024, an amendment was introduced to the legal framework governing the entry, stay, exit and removal of foreign nationals from national territory, bringing an end to the "Manifestation of Interest" regime and marking the conclusion of a process that, for years, allowed thousands of foreign employees to regularise their stay by carrying out professional activity without holding a valid visa for that purpose.

This mechanism exceptionally waived the requirement of a residence visa for foreign employees who had entered the country irregularly, provided they were already integrated into the employment market and had been duly registered with social security for at least 12 months.

With the revocation of this regime, the system has reverted to a more considered approach, granting access to the employment market only through prior regularisation of entry into national territory – thus preventing the exponential growth of irregular employment and of criminal networks linked to human trafficking and assistance to irregular immigration.

To address the transitional impact of this policy shift, successive automatic extensions of residence permits were introduced over the past few years, initially justified by the context of the COVID-19 pandemic and later by the administrative reorganisation following the transition from the former Immigration and Borders Service (*Serviço de Estrangeiros e Fronteiras* – SEF) to the current Agency for Integration, Migration and Asylum (*Agência para a Integração, Migrações e Asilo* – AIMA). These measures are aimed at ensuring documental stability for thousands of employees and at easing the pressure on AIMA. According to the latest extension, expired permits remain valid until 15 October 2025, and a transitional regime has been created allowing holders to maintain their rights by presenting proof of a renewal request.

Holders of temporary residence permits issued under the Manifestation of Interest regime are thus safeguarded until that date. However, doubts remain regarding the future: ie, whether these employees must return to the starting point, requiring a residence visa in order to obtain a residence permit, or, despite its exceptional nature, whether they will continue to be allowed to renew their permits under the general rules.

ROMANIA

Law and Practice

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Eversheds Sutherland Romania has a team of seven partners and over 25 associates at all levels of seniority, and delivers premium business law consultancy in English, German and French. Its clients benefit from both local insight and global expertise, receiving practical, focused and results-driven advice. The firm's managing partner, Mihai Guia, leads the Central Eastern Europe group, ensuring strong leadership and regional co-ordination. In the past two years alone, the firm has advised on M&A transactions valued at more than EUR1 billion, reflecting its

significant experience in complex legal matters. The firm is committed to high-quality service, timely delivery and cost-transparency, providing international clients with a one-stop legal solution tailored to their needs. By leveraging its extensive network and in-depth industry knowledge, the firm develops innovative strategies that address the unique challenges faced by each client. It values long-term partnerships and strives to foster trust by maintaining open communication, understanding clients' business objectives and anticipating their legal requirements.

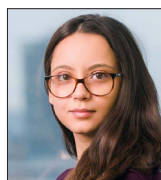
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EVERSHEDS SUTHERLAND

1. Employment Terms

1.1 Employee Status

Romanian labour law does not apply the concepts of blue-collar workers and white-collar workers. A “seniority” distinction is made between managerial functions (with decision-making, co-ordinating and representative powers) and execution functions (where operational, technical or administrative tasks are performed). Such distinction is important as different functions are subject to different employment terms, such as varying probation periods and notice requirements upon resignation.

1.2 Employment Contracts

Permanent employment contracts are the rule under Romanian labour law, with permanent roles being highly preferred and prioritised by candidates seeking employment.

By exception, fixed-term term contracts may be used, but only in specific and limited circumstances/scenarios, which are regulated by the Labour Code. Fixed-term contracts are, by nature, limited in time (a definite term contract can have a maximum of 36 months) as well as frequency (a maximum of three successive contracts, each having a limitation of 12 months, can be concluded between the same parties).

Other than the duration of their employment, permanent and fixed-term employees benefit from equal treatment and similar employment-related rights.

The individual employment contract (either fixed-term or permanent) must be concluded in writing and registered in the General Registry of Employees prior to the beginning of the employment relationship.

Allowing employees to work without having a signed and registered employment contract, before the first day of work, qualifies as undeclared work and exposes both the employer and the employee to administrative fines – in certain cases, even separate fines can be applied for not having a signed contract and not having a registered contract, within the legal deadlines.

There is a set of clauses that an employment contract must have as a minimum. These are provided by the law, as follows:

- the identity of the parties;
- the place of work – if the employee will travel between different workplaces, the employment contract needs to specify whether travel costs are covered by the employer;
- the corresponding position/occupation and duties;
- the start date;
- the duration of the work and the duration of the contract;
- salary rights (including other constitutive elements of the salary), periodicity and means of payment;
- the duration of the leave;
- the duration of the probationary period;
- notice period and conditions;
- job-specific risks;
- the professional criteria for evaluating the activity; and
- provision of private insurance, supplementary contributions on pension or other rights granted by the employer (if granted).

Other specific clauses – such as non-competition, confidentiality, mobility, professional training provision, electronic signature procedures or an applicable collective bargaining agreement – can also be included in the employment contract.

1.3 Working Hours

Full-Time Work

A full-time working schedule is 40 hours per week. The distribution of working time throughout the week is generally uniform – namely eight hours per day for five days, followed by 48 consecutive hours of rest (usually Saturday and Sunday). Full-time contracts concluded for employees under 18 years of age are limited to six hours per day and 30 hours per week.

Unequal distribution of working time and flexible arrangements

An unequal distribution of working time may be applied, provided that the limit of 40 hours per week is still observed and this pattern is agreed with the employee. Usually, unequal distribution of work is implemented as a working schedule of ten hours per

day, four days per week, but a different pattern can also be implemented (for example, daily shifts of different duration), provided that the 40 hours per week limit is observed and that the daily shifts are followed by the minimum mandatory daily rest periods.

Flexible working-time arrangements – including flexible starting hours – may be used; flexible working-time patterns are frequently used in tech companies and are promoted as a benefit that the company offers to attract highly skilled employees.

Part-Time Work

Part-time contracts are employment contracts concluded for any fraction of the normal working time of 40 hours per week. No minimum number of working hours is imposed by Romanian labour legislation.

Part-time employees enjoy the same level of benefits as full-time employees with respect to the minimum wage, notice periods, severance payments and protection against unfair dismissal.

Part-time contracts must expressly stipulate:

- the working hours and manner in which these are allocated (which in practical terms means the time interval within which the employee will work);
- the conditions under which the working programme can be amended; and
- a prohibition on performing overtime, except for the reasons of force majeure or urgent works needing to be performed to prevent accidents or to remove the consequences of such accidents.

Overtime

Overtime work means hours that are worked outside the normal working hours of 40 hours per week. Working time, including overtime, may not exceed an average of 48 hours per week, calculated over a reference period of four months, unless otherwise specifically regulated in relation to particular situations. Employees under 18 years of age cannot perform overtime.

Overtime must be compensated in all cases and irrespective of the type of work carried out or seniority of the employee (unlike in other jurisdictions, it is not implied that certain categories of senior employees

may or can be requested to work beyond the contractual working hours). The standard practice is to compensate working time in kind, with equivalent paid time off within 90 calendar days after overtime was carried out. If granting time off is not feasible, financial compensation is permitted. The overtime indemnity is determined through either a collective bargaining agreement or an individual employment contract, and must be a minimum of 75% of the base salary.

1.4 Compensation

As of 1 January 2025, the statutory gross minimum wage is RON4,050 (approximately EUR800) per month for a full-time position.

Recent legal changes require that an employee cannot be paid on the basis of the statutory gross minimum wage for more than 24 months – after this period, the employer has an obligation to increase the salary.

Currently, there are no mandatory automatic salary/compensation indexation mechanisms – adjusting the salary with inflation rate, market trends or by reference to other aspects. This is, however, a topic that is often agreed on or negotiated at the collective bargaining level between the employer and employees' representative bodies/works councils/trade unions.

1.5 Other Employment Terms

Annual Leave

The minimum annual leave entitlement is 20 working days, irrespective of the type of employment contract, seniority or role.

Employees under 18 years of age, employees with disabilities and employees working in special or exceptional conditions benefit – by law – from three days of additional annual leave.

Additional Paid Days Off

Employees also have the right to additional paid days off for special family events. The entitlement to such additional days off (such as events that trigger the benefit, number of days off, formalities or any other aspects) are usually detailed in the collective bargaining agreement in force at the level of the employer, or by the company's internal regulations.

Public Holidays

Employees also benefit from paid time off during public holidays if these fall during working days. Employees who work during public holidays are entitled to corresponding paid time-off compensation for the activity carried out during the public holiday. If paid time off is not possible, they need to receive monetary compensation (a minimum of 100% of base salary for the time worked during the public holiday).

As of August 2025, there are 17 public holidays in Romania per year.

Family-Related Care Leave

Employees are entitled to family-related care leave to provide care or support to a relative or a person living in the same household with the employee. The maximum duration for this leave is five working days annually, and the employee needs to provide details regarding:

- the fact that the person to whom the care was granted is a relative; or
- that the person lives in the same household as the employee; and
- that the person from the preceding two points needs care for a severe medical condition – a list of medical conditions that make employees eligible for this leave is provided by the law.

Maternity Leave

Maternity leave is granted for a total duration of up to 126 calendar days, typically divided into two equal periods of 63 days before and after childbirth. However, these periods may be merged, subject to medical approval, provided that the portion of the leave taken after the birth of the child is at least 42 calendar days. Maternity leave is paid throughout the entire period, in the form of a maternity leave indemnity that is calculated as a percentage of the employee's monthly salary.

Paternity Leave

Paternity leave is granted for up to ten working days and must be requested within eight weeks following the birth of the child. An extension of five additional working days is permitted if the father has completed an accredited child rearing course. The paternity

leave is paid in the form of a paternity leave allowance, equivalent to the employee's salary for the duration of the leave.

Parental Leave

Parental leave may be taken by either (eligible) parent for a period of up to the child's second or third birthday. Typically, one parent takes the full duration of parental leave, while the other eligible parent must take at least two months of it. Employees are entitled to a parental leave indemnity, paid through the local state budget.

Maternity Risk Leave

Maternity risk leave is granted for pregnant or breast-feeding employees who, due to working conditions, cannot continue working. Employees may benefit from this type of leave either before birth or after they return to work, provided that the issues which pose a risk to the pregnancy and/or the employee cannot be otherwise cured by the employer. This type of leave is a paid leave, with the maternity leave indemnity being calculated as a percentage of the employee's monthly salary.

Sick Leave

Sick leave is granted during periods of temporary incapacity for work, on the basis of a medical certificate issued by the employee's doctor. The maximum duration of sick leave is 183 days in a period of 12 months, noting that there are certain illnesses for which the total duration of the sick leave may exceed this threshold. Employees continue to be paid throughout the sick leave, in the form of a sick leave indemnity, which is calculated as a percentage of the employee's monthly revenues.

Other specific leaves are provided by the law, such as:

- leave for the care of a sick child;
- adoption leave;
- leave to accompany/care for a cancer patient;
- days off for an employee holding a local public office;
- days off for blood donation; and
- days off for employees undergoing fertility procedures.

The entitlement and conditions under which employees may apply for and benefit from these types of leave are specific to each leave.

2. Restrictive Covenants

2.1 Non-Competes

Non-compete clauses may be validly concluded either at the time of entering into the individual employment agreement or subsequently during the course of employment. Such clauses are subject to specific validity and enforceability conditions imposed by the Romanian Labour Code.

Non-compete clauses are particularly common for employees in management or strategic positions, where the employer has a legitimate interest in protecting confidential information, business know-how and client relationships.

Post-termination non-compete clauses are subject to financial compensation. The compensation must be paid on a monthly basis for the entire duration of the restriction period and may not be lower than 50% of the employee's average gross monthly salary during the last six months preceding the termination of the employment relationship.

To be valid, the non-compete clause must expressly address the following elements:

- the specific activities that the former employee is prohibited from performing;
- the identity or categories of third-party competitors for whose benefit the employee cannot work;
- the amount of the monthly non-compete indemnity;
- the geographical area in which the restriction applies; and
- the maximum duration of the restriction, which may not exceed two years from the termination of the employment agreement.

To the extent that the employee deems the restrictions contained in the non-compete clause to be excessive/disproportionate, it may refer the case to the competent court of law, which may limit the effects of the non-compete clause.

Unless this option is expressly reserved and documented in the employment contract, the employer cannot unilaterally waive the non-compete clause.

2.2 Non-Solicits

Non-solicitation clauses are commonly included in employment contracts, particularly for management or key employees who have direct access to clients, business-sensitive information or other employees. These clauses aim to restrict former employees from soliciting either their former colleagues or the company's clients for a certain period following the termination of the employment relationship.

Non-solicitation clauses may target two distinct types of conduct. First, they may prohibit the former employee from actively seeking to recruit or induce other employees to leave the employer. Second, they may restrict the former employee from approaching or enticing clients or business partners of the former employer with whom they had direct contact during employment. Unlike non-compete clauses, non-solicitation clauses are not subject to mandatory financial compensation and can be validly agreed without any additional payment being made to the employee.

3. Data Privacy

3.1 Data Privacy Law and Employment

Data privacy in the context of employment relations is governed by the General Data Protection Regulation (GDPR) as well as by specific local legislation (Law 190/2018).

From a local employment law perspective, besides the GDPR's provisions being applicable, there are local requirements that must be observed by employers.

For example – and by reference to one of the more commonly asked questions in this field – if the employer intends to implement means of monitoring the activity of employees, either through communication means or through video surveillance systems, this approach is subject to ensuring that:

- the processing is necessary and justified by the legitimate interest of the employer and this prevails over the rights and liberties of employees;
- no other less intrusive means can be used;
- employees are properly and expressly informed in advance;
- there is a privacy impact analysis (where necessary);
- the data cannot be kept longer than the actual purpose of the processing, but no more than a maximum of 30 days (with the exception of specifically provided cases); and
- the trade union/employees representatives are consulted prior to introducing the monitoring system.

Another topic on which Romanian law takes a more rigid approach than other jurisdictions refers to the scope of background checks. Criminal records cannot be discriminatingly requested for any and all employees, especially if this would not be proportionate to the type of role they will occupy.

4. Foreign Workers

4.1 Limitations on Foreign Workers

As a rule, foreign workers – meaning non-EU, non-European Economic Area (EEA) or non-Swiss Confederation nationals – can be employed in Romania only on the basis of a work authorisation, issued following a comprehensive immigration process.

Immigration limitations are in force, with respect to:

- who may sponsor a work visa (in other words, there are employer-related conditions);
- who may benefit from a work authorisation (employee-related conditions); and
- general labour market-related limitations (for example, there is a maximum number of work authorisations that can be issued each year – currently, this limit is set at 100,000 new foreign workers for all of 2025).

4.2 Registration Requirements for Foreign Workers

Nationals from EU or EEA member states or from the Swiss Confederation do not require special work authorisation to be employed in Romania. They benefit from the same employment conditions as Romanian citizens. However, depending on the duration of their stay, additional administrative formalities (such as registration or residency notification) may apply for residence purposes.

Foreign individuals (non-EU/EEA or non-Swiss Confederation) require work authorisation to be obtained before commencing employment in Romania (limited exceptions or exemptions may apply). In such cases, the employer must initiate the process by submitting a request to the General Inspectorate for Immigration. This is a prerequisite for the issuance of the appropriate long-stay visa and, subsequently, the residence permits for employment purposes.

When employing foreign nationals, employers must be mindful that there will be additional information/transparency requirements. Certain events throughout the course of employment must be reported to the immigration authorities:

- for individuals hired based on exceptions to obtaining work authorisation – hiring of individuals, and change or termination of contract for these individuals, needs to be notified to the immigration authorities; and
- for individuals hired with the obligation to obtain work authorisation – termination and suspension of contract needs to be notified to the immigration authorities.

5. New Work

5.1 Mobile Work Remote Work (or Telework)

The implementation of remote working models has increased at an accelerated pace, especially during the COVID-19 pandemic. This stress-tested employers' readiness to adjust their working models to accommodate flexibility in terms of management of their workforce. Remote work requires that this form

of work be expressly agreed between the employer and the employee, either at the onset of employment or during the employment relationship, through a specific addendum. Aspects that refer to the place of work, working time, number of remote days versus on-site days, and reimbursement of telework costs are negotiated and documented through telework-specific documentation.

While remote work (fully or partially) is still a widespread practice and is often offered as a benefit, the authors have seen a trend of employers tweaking this entitlement or transitioning back to fully/mostly office/on-site hours.

Confidentiality and Data Privacy

Rules around confidentiality and the protection of data/data privacy are included in telework policies and documentation. Teleworkers are expected to adhere to the same or even stricter confidentiality and data protection standards compared to office-based employees.

Use of the teleworker's personal data (for example, to monitor adherence to the working hours, track productivity, limit the risk of fraud, etc) is carried out with the strict observance of GDPR rules, factoring in the particularity that employees are carrying out work in their own private space. Employees' data may be collected and processed in compliance with the principles fundamentally established by legislation – namely:

- legality;
- fairness;
- transparency;
- purpose limitation;
- data minimisation;
- accuracy;
- limitation of storage duration; and
- ensuring data confidentiality and security.

Occupational Health and Safety

Unlike office workers, teleworkers carry out their job primarily outside the supervision of the employer, using devices that are not audited or, in some cases, even provided by the employer. From this perspective, the allocation of health and safety-related obliga-

tions between the employer and the teleworker should be clearly established before this telework model is implemented.

Teleworkers have particular obligations in so far as health and safety is concerned, including to provide access to their place of work when there are concerns from this perspective, and when an accident or a health and safety-related incident is investigated by the labour authorities. Similarly, employers have the obligation to ensure that the fact that the employee works in an isolated manner is accounted for and addressed.

5.2 Sabbaticals

Romanian legislation does not yet include or regulate the concept of sabbatical leave.

However, employers may offer the possibility for employees to take unpaid time off. Usually, this is subject to operational requirements, the employee's historical performance and the number of days off requested by the employee, among other factors.

5.3 Other New Manifestations

In line with trends in other EU jurisdictions, efforts are being made and measures being taken to promote flexibility at work and higher emphasis on work-life balance.

While a shift can be seen from the widespread adoption and promotion of the benefits of remote working to the more traditional in-office model, recent changes in labour legislation still appear to favour the adoption of flexible work models – for example, parents may specifically request telework days, employees may request the adjustment of their working time pattern to accommodate their personal situation, etc.

Four-Day Working Week

The concept of a four-day working week has become more popular in Romania, though not as popular as in other EU jurisdictions. While there is no specific legislation addressing this type of work model (as the existing legal framework already allows it), a notable shift in this direction is yet to be seen.

6. Collective Relations

6.1 Unions

Unions are voluntary employee organisations established to protect the employees' interests. A union may be formed by at least ten employees from the same employer, or by at least 20 employees from different employers within the same collective bargaining sector.

In order to obtain legal personality, a union must be formally registered with the competent courthouse.

Once established, the union needs to be representative within the employer in order to be considered a valid social dialogue partner. Specific conditions must be fulfilled for representativity:

- having at least 35% of the employees formally affiliated to the union;
- having financial and organisational independence; and
- having the legal status of a union (ie, obtained legal personality).

The union may either act for collective purposes (representing all the employees affiliated to the union) or engage in individual cases. Collectively, a union can act on behalf of employees by running negotiations (for example, for concluding the collective bargaining agreement), mediation and arbitration procedures, petitions, protests, demonstrations and/or strikes.

With respect to individual cases, the union has the right to take any action on behalf of its members, if requested.

The union has the right to establish its own regulations, freely elect its representatives, organise its management and activities, initiate programmes, etc.

Romanian legislation provides specific information and consultation rights for representative unions.

6.2 Employee Representative Bodies

Within entities that have at least ten employees and where the employees are not otherwise unionised,

employees may elect representatives to promote and defend their rights and interests.

The employees' representatives are elected at the level of the employer by at least half plus one of the number of employees (50% + 1). Their mandate may last for up to two years, with the possibility of re-election at the end of the term.

The number of employees' representatives at the level of a company is established in agreement with the employer; where no agreement is reached, guidance is provided by Romanian legislation regarding the appropriate number of representatives by reference to the overall population.

Similarly to unions, employees' representatives act in the interest of the employees, as a collective body. They can either represent employees' rights collectively (such as in negotiation of the collective bargaining agreement) or in specific individual cases, upon request.

Romanian legislation provides specific information and consultation rights for employees' representatives.

6.3 Collective Bargaining Agreements

Collective bargaining agreements (CBAs) are frequently used as a tool to improve the employee's rights and benefits, at a collective level, rather than by engaging in individual negotiations.

While concluding a CBA is not mandatory, consultations in view of potentially implementing a collective agreement are required for companies that employ more than ten individuals.

The CBA can govern aspects of the employment relationship, including remuneration and other wage-related entitlements such as:

- minimum salary levels for different functions/positions;
- night work entitlements;
- seniority;
- performance;
- holiday bonuses;

- method and frequency of payments; and
- matters related to working time and rest time (ie, working hours, flexible hours, shifts, additional days off, weekly rest, etc).

In negotiating the CBA, the employer is represented by its corporate body/bodies, whereas employees are represented by elected representatives, trade unions or trade union federations/confederations. Either party (employer or employees) can initiate the negotiation of a CBA. To keep the process concise and to promote a close dialogue, the overall period of negotiation of a CBA should not exceed 45 days (this period can be extended with both parties' agreement).

Signed CBAs are subject to registration requirements – once the parties agree on the CBA's final version, the contract will be registered with the territorial labour authority, though in principle a CBA agreed only at the level of a particular company will not be publicly available to anyone outside the employer's organisation (other than the labour authorities).

Only one CBA can be concluded and registered at the level of the same employer. Once registered, the CBA will be applicable to all employees within the employer, regardless of whether or not they are affiliated with the trade union that was involved in the negotiation or whether they participated in the election of the employees' representatives.

Aside from company-level registered CBAs, there is also the possibility for applicable sector-level CBAs and national-level CBAs. Romania does not currently have a national-level applicable CBA, but there is an ongoing trend towards having sector-level applicable CBAs (ie, banking sector-level CBAs).

7. Termination

7.1 Grounds for Termination

Romania is not an employment-at-will country.

The immediate effect of this is that any termination of employment must be documented and must fall within one of the specific situations in which termination is allowed.

When the employer decides on the unilateral termination of the employment relationship, the dismissal decision must be issued in writing and motivated – both on legal and factual grounds. Depending on the reason for dismissal, the dismissal decision must include specific provisions – otherwise, it may be annulled by a Romanian court of law.

Depending on the legal grounds for the dismissal, different procedures and rules must be followed. The most common types of dismissals are outlined in the following.

Disciplinary Dismissal

Disciplinary dismissal is possible if the employee is found guilty of either gross misconduct or several repeated (less severe) misconducts. The dismissal on disciplinary grounds is the most severe disciplinary sanction an employer may apply and, although Romania law does not expressly impose a gradual/progressing disciplinary system, the authors note that employment courts tend to factor in this principle whenever they are asked to rule on the proportionality of a particular sanction.

A disciplinary termination decision can be issued only after a disciplinary investigation is carried out. The disciplinary investigation is an internal process, carried out by the employer, but with the participation of the employee. The employee must be allowed the right to:

- defend themselves against any allegation;
- provide evidence to support their position; and
- have legal representation throughout the process.

Employees who are terminated on disciplinary grounds are not entitled to notice or severance.

Termination for Professional Inadequacy

Professional inadequacy is also an available (but not very frequently used) basis for the unilateral termination of an employee's contract. The employer must demonstrate, based on objective evidence, that an employee is not able to meet the professional requirements of the position – ie, that the employee lacks the skills needed for the job. Before proceeding with dismissal on these grounds, the employer is required to conduct a prior adequacy evaluation, which can

involve testing the employee, reviewing their past performance, analysing failed Performance Improvement Plans (PIPs), etc. Employees terminated on inadequacy grounds are entitled to a notice period, but there is no statutory severance.

Elimination of the Job Position/Redundancy

Eliminating a job position following an internal restructuring is a lawful reason for dismissal, provided it is unrelated to individual employees who are ultimately impacted and is based on a genuine business need (Romanian law requires that any redundancy be based on a *real* and *serious* cause). This decision must be supported by internal documents, such as assessments that justify the elimination and detail how it will benefit the company. The process usually includes:

- preparing a business case;
- deciding which positions to cut;
- notifying affected employees; and
- finalising termination after the notice period.

Redundancies can be individual or collective; collective redundancies require additional steps, including notifying local authorities and consulting with unions or employee representatives. Employees terminated following redundancies are entitled to a notice period, but no statutory severance is due.

Collective Redundancies

In addition to the requirements mentioned above regarding the underlying causes and justifications of terminations due to redundancies or role eliminations, collective dismissals imply a comprehensive information and consultation process. Unions or employees' representatives are required to be consulted before a collective dismissal decision is formally taken.

To allow meaningful consultation with the union or employees' representatives, the employer must provide them with all the information and notify them in writing. Additionally, the employer is legally required to inform the territorial labour authority regarding the planned collective redundancies, as part of the formal notification procedure.

The trade unions/employees' representatives are then allowed a reasonable period of time to analyse the

information provided by the employer and to suggest potential remedial actions or measures that can be made to mitigate the impact.

Once a proposal from the employees' representative bodies is received, the employer has an obligation to respond to each point, to properly consider it and to submit a formal response to the employees' collective negotiation bodies. Only after the information and consultation process is finalised can the employer proceed with implementing the collective dismissal.

7.2 Notice Periods

Notice periods in Romania can be seen from two perspectives:

- notice period upon resignation – this is a maximum of 20 working days for execution positions and 45 working days for management positions; and
- notice period upon dismissal by the employer (noting that not all dismissal cases require that a notice be given) – this is a minimum of 20 working days.

Payment in lieu of notice is not possible.

The employer can waive the notice period in the case of an employee's resignation.

7.3 Dismissal for (Serious) Cause

Dismissal for serious cause falls under the disciplinary dismissal process mentioned previously (see 7.1 **Grounds for Termination**).

An employee can be dismissed on disciplinary grounds either for serious breaches or for repeated breaches of contract or employment rules, as regulated in internal regulations or policies applicable at the employer's level.

The list of situations that justify this type of dismissal is not prescribed by Romanian law, so it is left to the employer's assessment whether a particular incident occurred in circumstances that are severe enough or produced consequences negative enough to justify a termination on disciplinary grounds. While the disciplinary investigation is an internal process, it is subject to appeal, directly before the court of law. The court of law has the authority to re-evaluate the case and to

re-qualify the seriousness of the offence, and to ultimately decide on changing the disciplinary sanction.

This may have negative consequences for the employer, because if a disciplinary dismissal decision is overturned by the court the employer will have the obligation to pay to the employee all salaries that the employee would have been entitled to in the absence of the dismissal, as well as to compensate for moral damages and potentially to reinstate the employee.

7.4 Termination Agreements

Mutual separation remains the most frequent option used by employers to separate with employees. This route is preferred as it reduces potential legal risks that arise out of court proceedings, and usually allows the employer and employee to agree on the conditions under which separation will occur.

In the context of mutual separation, all the terms of the separation are subject to negotiation. There is no minimal notice period or statutory severance payable in the case of mutual separation – all of these terms are subject to discussion.

7.5 Protected Categories of Employee

Labour law provides protection from dismissal for employees under the following circumstances:

- during sick leave, established by a medical certificate in accordance with the law;
- during the suspension of work following the institution of quarantine;
- during the period in which the employee is pregnant, to the extent that the employer is aware of this fact prior to the issuance of the dismissal decision;
- during maternity leave;
- during parental leave;
- during leave to care for a sick child up to the age of seven years or, in the case of a disabled child, for a recurring illness, up to the age of 18 years;
- during annual leave;
- during paternity leave;
- during family-related care leave; and
- while absent from work in unforeseeable circumstances caused by a family emergency resulting from sickness or accident, which makes the

employee's immediate presence indispensable, provided that the employer has been informed in advance.

However, these limitations do not apply in cases where the dismissal is triggered by judicial reorganisation, bankruptcy or dissolution of the employer.

Special protection against dismissal is also provided in specific legislation.

8. Disputes

8.1 Wrongful Dismissal

The employee can bring a wrongful dismissal claim before the competent court if they consider their dismissal to be unlawful or unjustified.

The main grounds for such a claim are:

- lack of legal grounds for dismissal – the employer failed to provide a valid, legal reason for the dismissal (disciplinary, inadequacy, redundancy, etc);
- failure to observe the procedural requirements – Romanian legislation provides for strict procedural steps to be taken with every dismissal;
- violation of employee's rights – dismissal of an employee while being protected by law against dismissal;
- lack of evidence or arbitrary dismissal – if the employee is dismissed based on disciplinary grounds, lack of evidence to substantiate the employee's misconduct can form the basis of a wrongful termination claim; and
- discriminatory or retaliation claims – Romanian legislation strictly prohibits dismissal on discriminatory grounds or as a form of retaliation (for example, the employee made a harassment claim against their manager, and shortly after was dismissed).

Consequences of a Wrongful Dismissal Claim

If the court finds that the employee was wrongfully dismissed, it may impose the following remedies and sanctions.

The dismissal decision may be declared null and void, and the employer may be obliged to pay the employee

the salaries they would have been entitled to had they not been dismissed, from the moment of the dismissal up to the moment when the court's decision is final. This includes bonuses and any other entitlements that the employee would have received in that period.

If the employee requests, the court can oblige the employer to reinstate the employee to the position they had prior to the dismissal.

Moreover, the employer may be obliged to pay compensation for moral damages if the employee proves that they suffered prejudice due to their dismissal, as well as any other legal fees and court costs (if awarded by the court).

8.2 Anti-Discrimination

Discrimination Grounds

Romanian legislation specifically defines certain protected characteristics – namely:

- race;
- nationality;
- ethnicity;
- colour;
- language;
- religion;
- social origin;
- genetic features;
- gender;
- sexual orientation;
- age;
- disability;
- chronic non-contagious disease;
- HIV infection;
- political opinion;
- family status or responsibility;
- trade union membership or activity; and
- membership of a disadvantaged group.

Two forms of discrimination are regulated under Romanian law:

- direct discrimination, which represents any act or fact of distinction, exclusion, restriction or preference based on one or more of the protected criteria mentioned above, which has the purpose or effect of denying, restricting or withdrawing the

recognition, use or exercise of rights provided for in employment legislation; and

- indirect discrimination, which represents any apparently neutral provision, action, criterion or practice that has the effect of placing a person at a disadvantage compared with another person on the basis of any of the criteria mentioned above, unless that provision, action, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are proportionate, appropriate and necessary.

Burden of Proof

In discrimination claims, the burden of proof is partly reversed. The complainant must present initial prima facie evidence suggesting possible discrimination. Subsequently, the burden shifts to the employer, who must show that there was no discrimination or that their actions were justified.

Applicable Sanctions

Discriminatory practices are qualified as administrative offences and are sanctionable with a fine of between RON1,000 and RON30,000 (approximately EUR200 and EUR6,000) per infringement.

In addition to the above, the discriminated employee may also claim that any discriminatory conduct stop as well as compensation for any damages caused by the discrimination. Action can be taken before either the court or the National Council for Combating Discrimination. Reputational damages are also possible, with the employee having the possibility to request the publication in mass media of the summary of the decision that states the discrimination.

8.3 Digitalisation

There is one legislative project that proposes that the parties involved in civil proceedings (including employment-related cases) be notified by the court clerk about the possibility of participating in the hearing by video conference.

Currently, certain hearings can be carried out by video conference, depending on the availability and equipment of the court.

Other proceedings related to employment situations can be carried out via video (namely disciplinary hearings, adequacy review evaluation meetings, and harassment claim interviews), subject to the internal regulations of each employer.

9. Dispute Resolution

9.1 Litigation

Employment disputes fall under the competence of a tribunal or Court of Appeal, depending on the phase of the litigation.

These types of disputes are heard by specialised judges functioning in specialised sections of the respective court.

Class Actions

Collective or joint actions are possible in Romanian labour law, mainly in the case of disputes that are initiated by trade unions. The remedies obtained will apply only to the members of the trade union who have been granted a valid mandate for representation in connection with the respective claim, and not to an entire “class”. In other words, this type of action does not constitute a class action in the typical sense.

A key condition for this representation is that trade unions must have legal standing and may only initiate legal actions on behalf of their members based on a valid mandate. Importantly, individual members retain the right to oppose or withdraw from the legal action at any time before the conclusion of the judicial proceedings.

Representation in Court

In employment-related trials, the parties may be represented legally, conventionally or judicially. They have the right to appoint a representative; however, there may be situations where the law requires the personal presence of the party in court. In all cases, it is necessary to provide proof of the representative's authority for the action to be considered valid.

9.2 Alternative Dispute Resolution

Arbitration is possible in the case of disputes relating to collective labour conflicts. However, in order to reach arbitration, conciliation organised by the ministry responsible for social dialogue or by the territorial labour inspectorate is first necessary. If the collective labour disputes have not been resolved through conciliation, the parties may decide by mutual agreement to start the arbitration or mediation procedure.

Pre-dispute arbitration agreements between the employee and the employer are not valid. Nevertheless, such an agreement could be valid in a collective labour dispute. The pre-dispute arbitration agreement should be in written form, under penalty of its nullity. This kind of agreement can be concluded by a clause stipulated in the initial contract or by a subsequent contract.

9.3 Costs

In Romanian law, the rule is that the losing party will be ordered to pay the court costs, at the request of the winning party. The court costs include:

- the fees of lawyers, experts and specialists;
- the amounts due to witnesses for travel and the losses caused by the need to be present at the trial; and
- transport expenses and any other expenses necessary for the proper conduct of the trial.

When the claims are admitted only in part, the judge shall determine the extent to which each of the parties may be ordered to pay the costs.

However, when the court assesses or is so requested, it may reduce the expenses for the fees of lawyers, judicial experts or specialists, when they are manifestly disproportionate in relation to the value or complexity of the case or to the activity carried out by the lawyer.

Trends and Developments

Contributed by:

Oana Palita and Cosmina Raicu

Eversheds Sutherland Romania

Eversheds Sutherland Romania has a team of seven partners and over 25 associates at all levels of seniority, and delivers premium business law consultancy in English, German and French. Its clients benefit from both local insight and global expertise, receiving practical, focused and results-driven advice. The firm's managing partner, Mihai Guia, leads the Central Eastern Europe group, ensuring strong leadership and regional co-ordination. In the past two years alone, the firm has advised on M&A transactions valued at more than EUR1 billion, reflecting its

significant experience in complex legal matters. The firm is committed to high-quality service, timely delivery and cost-transparency, providing international clients with a one-stop legal solution tailored to their needs. By leveraging its extensive network and in-depth industry knowledge, the firm develops innovative strategies that address the unique challenges faced by each client. It values long-term partnerships and strives to foster trust by maintaining open communication, understanding clients' business objectives and anticipating their legal requirements.

Authors



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EVERSHEDS SUTHERLAND

Introduction

Romania stands at a pivotal point in its economic development. As one of the fastest-growing markets in Eastern Europe, the country offers compelling opportunities for investors. However, recent political shifts, fiscal challenges and regulatory reforms have introduced new complexities. This article outlines the most pressing employment-related aspects that businesses should consider when entering into or expanding operations in Romania.

Romania's labour market in 2025 is undergoing a period of transformation, shaped by demographic shifts, digitalisation and evolving regulatory frameworks. For clients considering business operations or workforce expansion in Romania, understanding the current employment landscape is essential.

Returning to Work, and Flexible Working Schedules

For employees, remote working (locally referred to as “teleworking”) offers workers flexibility; sometimes translated into flexibility in organising their schedule, teleworking saves time and resources by eliminating commuting and, potentially, provides a better work-life balance. Nevertheless, risks arise such as social isolation, difficulty separating work and personal time, or pressure to be constantly “plugged in”.

For employers, teleworking can mean increased productivity, reduced office space costs and access to a wider pool of talent, unrestricted by geography. Challenges may include maintaining team cohesion, effectively monitoring work without becoming intrusive, ensuring data security and confidentiality, and evolving the organisational culture to new trends and needs.

While the COVID-19 pandemic accelerated the adoption of work-from-home arrangements – pushing companies to rethink traditional office culture, invest in more sophisticated IT tools, redesign existing roles, etc – many major companies in Romania have begun shifting away from fully remote models and have started encouraging employees to return to the office. This trend began in late 2023 and early 2024, and the pace at which employees are expected to return (fully or mostly) to the office is accelerating.

However, *flexibility* remains a critical element, especially for recruiting highly skilled staff for niche tech-heavy sectors.

Most employers continue to maintain hybrid systems, allowing employees to split their time between the office and remote work. This approach aims to balance business needs with employees' expectations for autonomy and work-life balance. Companies are also exploring compressed schedules and individualised working hours, especially in sectors such as IT, shared services and professional services.

In Romania, this trend mirrors global practices, with a clear emphasis on structured flexibility/hybrid models, rather than a full return to traditional “9 to 5” office routines. Romania has progressively aligned its labour legislation with EU standards to support flexible working arrangements, reflecting both employee needs and employer strategies for productivity and retention.

Under Romanian law, employees have the right to request flexible working arrangements, including:

- individualised working hours or schedules (reduced working time, flexible start and end time);
- teleworking;
- changes to the place of work; and
- paid time off.

These rights are specifically outlined for:

- parents of children under 11 years old, who, irrespective of the employer's policy on remote work, are allowed to take up to four days per month of telework (subject to conditions being met);
- employees who are caregivers for a family member with a serious condition or who are able to justify a family emergency (paid time off may be requested to address such special circumstances); and
- individuals with disabilities or health issues.

Attuning to the efforts being made at the legislative level to create a framework with higher emphasis on work-life balance, employers are expected to revise their internal policies accordingly and, wherever possible, to ensure that employees have real access to flexible working patterns.

Unionisation and Increase of Employees' Representativity at the Collective Level

Romania is undergoing a gradual transformation in its labour relations landscape. Unlike many EU countries, Romania no longer has a national-level collective labour agreement. While the national Social Dialogue Law mandates collective bargaining at the company and sectoral levels, sector-wide collective bargaining agreements remain rare. A notable exception is the April 2024 sector-wide collective agreement, applicable in the banking sector. While the collective agreement was originally negotiated between an employers' group formed by BCR, BRD, ING, Raiffeisen and UniCredit – and, on behalf of the employees, by the Federation of Trade Unions in the Financial Industry and the Federation of Unions in the Insurance and Banking Sector – its applicability was recently extended to the entire banking sector. This agreement introduced minimum wage guarantees, severance pay based on tenure, and provisions on equal opportunities and anti-harassment – marking a significant milestone in Romanian labour relations.

Romania is experiencing a shift in labour dynamics as unionisation becomes more common in sectors such as technology, shared services and the creative industry. Driven by concerns over workload, job security and fair pay, workers in these fields are increasingly forming unions – a notable change from the past when unions were mostly found in manufacturing, energy and public services.

This indicates that younger professionals are becoming more informed about labour rights and are pursuing increased representation in discussions with employers. For companies in Romania, this development highlights the need for clear communication, active employee engagement and adherence to labour regulations to support a stable work environment.

Rise in Workplace Harassment Investigations

While EU Directives laid the foundation for workplace harassment prevention, Romania has recently made significant updates in local legislation, transitioning from minimal regulation to a more comprehensive and enforceable framework.

In October 2023, Romania adopted a methodology for preventing and combating harassment, based on gender and moral harassment at the workplace, which requires employers to (among others things):

- implement internal procedures and policies tailored to their activity;
- designate a responsible person or internal committee to handle harassment complaints;
- maintain a register of complaints;
- offer support to the victim of the harassment;
- conduct annual training;
- ensure confidential reporting channels; and
- align internal regulations with the local regulations on equal treatment and anti-discrimination.

The Romanian Labour Inspectorate (ITM) has intensified inspections, focusing on whether companies have effectively implemented these obligations – not just formally, but in practice. Non-compliance can lead to:

- administrative fines of up to RON200,000;
- civil liability for moral damages; and
- criminal complaints, in serious cases.

The authors are seeing the direct effect of these legislative changes as well as an apparent shift in enforcement priorities. In the past year, there has been a notable increase in harassment-related complaints, to employers as well as to bodies such as the National Council for Combating Discrimination (CNCD) and the courts. According to the CNCD's 2023 report, 78% of its decisions were upheld in court, indicating strong legal grounding.

This trend also reflects a broader cultural shift: employees are becoming more informed about their rights and more willing to report inappropriate behaviour, whether it involves sexual harassment, bullying or other forms of misconduct.

Naturally, there is still a gap in understanding when the tools available under anti-harassment legislation are appropriate. Employers report a mix of legitimate claims, as well as mischaracterisations of workload issues or interpersonal conflicts as harassment.

This evolving landscape outlines the need for:

- well-grounded investigation procedures;
- transparent communication; and
- preventative measures such as regular training and clear escalation protocols.

Employers who proactively address these issues not only mitigate legal risks but also foster trust and strengthen organisational culture.

AI in Recruitment: EU Regulation and Romanian Implementation

The EU Artificial Intelligence (AI) Act (Regulation 2024/1689), which has direct applicability in Romania starting in August 2024 and with phased enforcement through 2025–2026, has introduced a baseline for the limitations and requirements that employers need to understand and factor in before widespread adoption of AI tools in workforce management and optimisation.

AI continues to be highly relevant across all client sectors, making it vital to understand its limitations and to build strong compliance – especially for companies working in multiple jurisdictions. While AI and automation can streamline processes, it also poses risks, necessitating clear usage guidelines. Employment – particularly recruitment and selection – is expected to be significantly affected as AI adoption increases. AI-driven recruitment tools can efficiently sort CVs but may introduce discrimination if algorithms are flawed or use irrelevant criteria.

Romania has begun aligning with the EU AI Act through the following.

- Direct application of the Regulation without requiring transposition.
- A national AI strategy approved in July 2024, promoting responsible AI adoption across sectors.
- Employers using AI in recruitment must:
 - (a) inform candidates and employee representatives;
 - (b) ensure qualified human oversight and continuous monitoring;
 - (c) keep log files for at least six months; and
 - (d) conduct data processing that is compliant with the General Data Protection Regulation

(GDPR), even when using public data sources (eg, LinkedIn).

Romanian labour legislation is expected to undergo further revisions in order to establish and implement robust safeguards. These measures aim to protect the rights of candidates and employees while promoting transparency and non-discrimination in AI-based processes.

The EU Pay Transparency Directive

EU Directive 2023/970 – which must be transposed into Romania by June 2026 – remains a hot topic for 2025, especially as the deadline for implementation approaches. The Directive brings major changes for employers, as follows.

- It imposes clear measures on equal pay between women and men, as well as new obligations to communicate and document salary policies. The Directive requires companies to disclose – at the request of employees – the criteria used to determine pay, information about their pay, and average pay levels for workers doing the same work or (more importantly) work of equal value, broken down by gender.
- It introduces transparency obligations in the pre-hiring phase: job applicants will have the right to receive information about the salary range for the role (including base pay and variable compensation). Such transparency will ensure informed negotiation during the recruitment process.
- It introduces reporting obligations: companies with over 100 employees must report gender pay differences and, where gaps exceed 5%, must conduct joint pay assessments with employee representatives in view of identifying, remedying and preventing unjustified differences.
- It levels the playing field: employers must ensure that roles of equal value are evaluated using objective, gender-neutral criteria, supported by accessible methodologies.
- It promotes disclosure, requiring companies to remove clauses that maintain salary confidentiality from individual employment contracts.

In Romania, the implementation legislation is still pending. The first step towards salary transparency

was taken through National Bank of Romania Order 4/2023, which updated the requirements regarding remuneration and internal governance. The regulations encourage the banking sector to establish gender-neutral remuneration policies and practices.

In anticipation of the EU Pay Transparency Directive's transposition deadline in June 2026, many employers have already begun preparing for the upcoming obligations, not only from a compliance perspective but also reflecting a strategic shift towards transparency, fairness and accountability in compensation practices. This proactive approach not only mitigates future risks but also strengthens trust and transparency within an organisation.

Steps that are already being taken include:

- internal pay audits – to identify and address any unjustified gender-based discrepancies, ensuring that existing compensation structures are fair and legally defensible;
- role mapping and equal value assessments – to evaluate positions across departments using objective, gender-neutral criteria, in line with the Directive's requirement to compare work of equal value;
- policy updates and transparency protocols – to align internal salary policies with the Directive's standards, including the removal of confidentiality clauses and the preparation of clear communication strategies; and
- training and readiness for employee requests – to equip HR and legal teams with the tools and knowledge needed to respond to pay transparency enquiries and to manage future reporting obligations effectively.

Mental Health and Well-Being Regulations

Romania is strengthening its legal and organisational framework to promote mental health in the workplace.

Under national labour laws and health and safety regulations, employers are required to ensure not only the physical but also the psychological well-being of their employees.

This includes assessing psychosocial risks, managing workload and creating a safe environment that prevents burnout and stress. Recent legislative developments – such as the updated anti-harassment regulations and gender equality measures – have reinforced the need for clear internal policies, reporting mechanisms and training programmes.

There have also been public discussions and legislative initiatives aimed at recognising burnout as an occupational disease, which would place additional obligations on employers to implement preventative measures, provide mental health support and adjust workloads where necessary.

Companies are increasingly expected to provide support systems such as employee assistance programmes (EAPs) and flexible working options as part of compliance and good practice. For employers, mental health is no longer a “soft” topic – it is a compliance priority, and failure to act can result in legal penalties and reputational risk.

At the same time, from practical experience the authors have observed that proactive measures in this area contribute to stronger engagement, lower absenteeism and improved productivity.

Economic Context and Labour Demand

Romania's economy is growing steadily, but labour market dynamics are increasingly complex. The country faces the challenge of a tight labour market, with demand outpacing supply in several key sectors. At the same time, some sectors are seeing a contraction of demand (eg, Business Process Outsourcing (BPOs), shared services, etc) in favour of jurisdictions with lower labour costs and more flexible employment legislation.

Sectors with high demand include:

- IT and software development;
- construction and engineering;
- logistics and manufacturing; and
- healthcare and social services.

Labour shortages include:

- skilled trades (eg, electricians, welders);
- medical professionals;
- machine operators; and
- business and administration associates.

Wage Expectations and Fiscal Changes

While wage growth remains modest, expectations are rising. Employers must balance budget constraints with competitive offers.

Key wage values include the following:

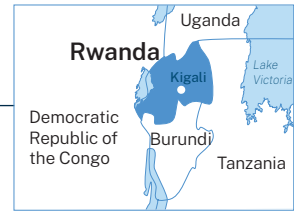
- minimum wage – RON4,050 (gross);
- average net salary – approximately EUR925/month;
- income tax – flat rate of 10%; and
- social contributions – around 35% of gross salary.

Recent fiscal reforms have removed certain tax exemptions, affecting net income for certain categories of workers (eg, IT, construction).

Law and Practice

Contributed by:

Aimery de Schoutheete, Valence Rukeshu, Chloé Stassart and Isaac Rwapasika
Liedekerke



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Liedekerke has a labour and employment department that is one of the largest employment teams within a full-service law firm in Belgium, and which is recognised as a leading practice. With a team of nine lawyers – including three partners – it advises and assists clients in all matters touching on labour and employment law. With offices in Brussels, London, Kinshasa and Kigali, the firm can offer seamless services wherever its clients choose to do business. Clients include Belgian, foreign and multinational corporations

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1. Employment Terms

1.1 Employee Status

Rwandan labour law makes no distinction between blue-collar and white-collar workers. The Rwandan Labour Code defines an “employee” as a person having agreed to work for an employer under a contract entered into between them, and in return for remuneration.

The only distinction appearing in the Rwandan Labour Code is between “employees” and “informal sector employees”, who are employees working for an enterprise or an individual for an employer that is not registered in the register of companies or with a public authority. The Rwandan Labour Code provisions relating to occupational health and safety, the right to form unions and employers’ associations, the right to salary, the minimum wage, leaves, social security protection against workplace discrimination, protection from forced labour, and prohibited forms of work apply without distinction to these two categories of employees.

In addition, specific regulations (eg, the Ministerial Order of 17 March 2020 relating to employees’ representatives) refer to managerial staff, without this category of worker being formally defined by law. In this context, the definition of a managerial employee may be the one used in other jurisdictions, ie, an employee who generally performs a management or control function in a company and usually enjoys a special status in collective agreements.

1.2 Employment Contracts

In Rwanda, employment contracts are required. They can be entered into for a fixed term or for an indefinite duration and can be written or oral. However, the duration of an oral employment contract cannot exceed 90 consecutive days.

The following terms must appear in written employment contracts:

- identification of the employee and the employer;
- purpose of the contract;
- obligations of contracting parties;
- duration of the contract;

- nature of the employment;
- category or level of employment;
- place of work;
- probation period;
- working hours;
- salary and fringe benefits;
- deductions on salary;
- date and place of payment of the salary;
- overtime remuneration;
- procedure of transfer of an employee;
- dispute settlement procedure;
- procedures for termination of the employment contract; and
- date of commencement of the employment contract.

These are the mandatory provisions. The parties to an employment contract remain free to add other clauses to govern their working relationship.

1.3 Working Hours

Working Time

According to the Ministerial Order No 01/MIFOTRA/23 of 13 June 2023 on working hours and public servants governed by employment contracts, the weekly working time for both private and public servants is 40 hours maximum.

For public servants the daily hours of work are eight hours from 8am to 1pm and from 2pm to 5pm with a flexible hour from 8am to 9am of working remotely (for example, from home). The daily time for rest for public servants governed by the Labour Code is one hour from 1pm to 2pm with flexibility to take such a break after 1pm for work related reasons. For such public servants, the time from 3pm to 5pm every Friday is reserved for sports activities.

Regarding employees in the private sector, the Ministerial Order of 13 June 2023, the weekly working hours are also 40 hours. The employee has the right to one hour of break which is determined by the employer. The time for starting the daily work is also determined by the employer but if the work starts before 9am, the employee has the right to one flexible hour from 8am to 9am to work remotely. An employee in the private sector has a right to 24 hours of rest in a week.

Part-Time

Rwandan law does not provide for any special arrangements for part-time workers. However, in Rwanda an employee is allowed to have more than one employment contract. Article 11 of the Labour Code states that employment contracts between an employee and more than one employer is collectively acceptable on condition that such employment contracts are not compromising one another. The Labour Code is, however, silent on what kind of compromise would be considered and the consequences if such employment contracts are compromising one another.

Overtime

Overtime is permitted in Rwanda if it is performed at the employer's request in the case of urgent work, seasonal work, exceptional work, work done to increase productivity or work of a special nature. As these concepts are not defined, they are interpreted broadly. Hours worked are considered to be overtime if they are worked in excess of the 40-hour week or in excess of the weekly working hours laid down in the company's rules of procedure (work rules) or in the employment contract.

The employer must track overtime hours in a register and the employee must confirm these hours, either by signing the register or by affixing their fingerprint. With regards to compensation for overtime, the employer must grant the employee compensatory rest within 30 days of the overtime being worked. If this is not possible, the employer must pay overtime at the same hourly rate with the following month's salary. There is no statutory complementary overtime pay (that is, an extra pay in addition to the normal hourly rate due for the overtime work) in Rwanda, regardless of whether overtime is worked during the day, at night, on a public holiday or during weekends. Of course, employers are free to grant complementary overtime pay to their employees. In that case, it can be done by mentioning it in the company's rules of procedure, in a collective bargaining agreement, and/or in the employment contracts.

1.4 Compensation Minimum Wage

To date, there is no statutory legal minimum wage in Rwanda as a ministerial order has yet to be adopted in this regard.

In the absence of a legal basis, the current reference is a judgment of 26 November 2016 from the Supreme Court (*Soras Ag Ltd v Umuhoza et al*, RCAA0049/14/CS), which sets the minimum daily wage at RWF3,000 (approximately USD3). This judgment is considered as setting the general rule regarding minimum wage, since (i) the ministerial decree regulating the issue has not yet been adopted, (ii) judges in Rwanda have the obligation to adjudicate all cases submitted to them, even in the absence of relevant rules of law, by adjudicating according to the rules that they would establish if they had to act as legislator, relying on precedents, customs, general principles of law and doctrine, and (iii) *Soras Ag Ltd v Umuhoza et al*, being a decision of the Supreme Court, is binding on all other courts in Rwanda.

Thirteenth Month and Bonuses and Government Interventions

There is no obligation under Rwandan law for employers to grant a thirteenth month and/or bonuses to their employees. However, approximately 20% of employers grant such incentives to their employees in order to improve the company's productivity.

There is sometimes government intervention in compensation or salary increases, especially in the public sector. For example, teachers' salaries were increased in 2022.

1.5 Other Employment Terms

There are five types of leave in Rwanda: annual leave, circumstantial leave, maternity leave, sick leave and authorised absence.

Annual Leave

The statutory annual leave equals one and a half working days per month of work, ie, 18 days per year. The parties can agree on provisions that are more favourable to employees. In any case, employees are entitled to one additional working day's paid leave for every three years of service with the same company,

but the total annual statutory leave can never exceed 21 days. In principle, the annual leave must be taken and cannot be paid in lieu. An employee is entitled to such leave after one year of service (including the trial period). Leave must be requested in writing and must be taken by mutual agreement with the employer, depending on the needs of the company.

In case of termination before the employee benefits from their annual leave, they are granted an indemnity in lieu of leave.

Circumstantial Leave

The employee is entitled to circumstantial leave for the following reasons:

- two working days in the case of their civil wedding;
- seven working days if their wife gives birth, five working days in case of complications, and one month if their wife dies leaving an infant aged less than three months;
- seven working days in the case of death of their spouse;
- five working days in the case of death of their child;
- four working days in the case of death of their father, mother, father-in-law or mother-in-law;
- four working days in the case of death of their brother or sister;
- three working days in the case of death of their grandfather or grandmother; and
- three working days in the case of their transfer over a distance of more than 30 km from their usual place of work.

Maternity Leave

A female employee who has given birth is entitled to maternity leave of at least 14 consecutive weeks, which includes two weeks that the employee can take before the delivery. In the event of complications, she is entitled to an additional paid leave of one month.

Additional leave is granted to employees who give birth to a stillborn baby, whose child dies after birth or who give birth to a premature baby.

Sick Leave

The Rwandan Labour Code distinguishes short-term and long-term sick leaves. A short-term sick leave

does not exceed 15 days and must be ascertained by a doctor. A long-term sick leave cannot exceed six months and must be ascertained by a medical committee composed of three doctors. The employee is entitled to their full salary during the first three months of leave. During the further three months, the employment contract will be suspended, and the sick employee will not be paid. If the employee remains sick after six months, the employer is entitled to terminate the employment contract, with a termination allowance ranging from two to seven months of salary, depending on the number of years of occupation.

Authorised Absence

An employee can lodge a request with their employer to be absent from work for a duly justified reason. Although not legally required, in practice, such request is made in writing.

Confidentiality and Non-Disparagement

Nothing is provided in respect of limitations on confidentiality or non-disparagement agreements under the Rwandan Labour Code. Employers are therefore free to include such clauses in the employment contracts or settlement agreements, although it is not frequent in practice. It is, however, recommended for key positions.

Employees' Liability

The Rwandan Labour Code specifies two situations in which an employee can be held liable, entitling the employer (and any other suffering party) to claim compensation.

- In case of illegal strike: employees risk at least six months' imprisonment and a fine of between RWF500,000 (approximately USD350) and RWF5 million (approximately USD3,500) or one of these penalties only. Employees are also liable for the damages caused in case of illegal strike.
- In case of violation of rules governing health and security at the workplace, if the employee causes a danger through clumsiness, negligence, carelessness, or inattention. Employees risk an imprisonment of between six months and two years and a fine of between RWF500,000 (approximately USD350) and RWF2 million (approximately USD1,300) or one of these penalties only.

Disciplinary sanctions can also be imposed on employees, depending on the seriousness of the fault committed whilst performing the contract:

- oral warning;
- written reprimand;
- temporary suspension not exceeding eight unpaid working days; and
- dismissal.

2. Restrictive Covenants

2.1 Non-Competes

There are no provisions regarding non-compete clauses in Rwandan employment law. The general principles of civil and contract law apply, among which the prohibition of unfair competition. Of course, the parties are free to agree on non-compete provisions in their employment contract, as a consequence of their contractual freedom.

2.2 Non-Solicits

Nothing is set out in the Rwandan Labour Code regarding non-solicitation clauses. It is, however, advisable to include such a clause, usually applicable for a standard period of 12 months following the termination of the employment contract.

3. Data Privacy

3.1 Data Privacy Law and Employment

Nothing related to privacy is mentioned in the Rwandan Labour Code. Generally speaking, privacy is mentioned in the Rwandan Constitution. Although not expressly stated, it may reasonably be assumed that this provision could be interpreted as applicable within the work sphere.

Rwanda adopted a Data Privacy law on 13 October 2021, which states that the Data Protection Officer appointed by a company must monitor compliance with the data privacy law at the workplace. This particularly includes the protection of personal data, awareness-raising and the training of staff involved in personal data processing operations.

4. Foreign Workers

4.1 Limitations on Foreign Workers

Occupying foreign workers is strictly regulated in Rwanda. To hire a foreign worker, an employer must:

- verify whether the job is on the occupations in demand list;
- verify whether the foreigner fulfils the requirements for the job;
- comply with immigration and emigration laws in relation to the residence permit; and
- recruit a foreigner whose licence is recognised by a regulatory professional body in Rwanda if the job has a regulatory professional body.

The occupations in demand list includes 20 job categories, such as managers, science and engineering professionals, life science professionals, health professionals, teaching professions, business administration professionals, etc, and lists the jobs in demand.

The ways to hire a foreigner are:

- through a labour market test;
- for a position specifically mentioned in an agreement ratified or signed by Rwanda;
- for public interest (this notion not being defined by law so its implementation will depend on practice); or
- secondment.

For the labour market test, the employer must:

- advertise the vacancy for at least two weeks and request applications from Rwandans only;
- examine the applications and, if none fulfils the requirements, issue a written report specifying the names of the applicants;
- when a hiring test has been made but no applicant has the required skills for the position, the employer issues a written report that indicates the names of the applicants, the name of those who sat for the test, the questions asked during the test, their marks and their answers;
- when none of the applicants fulfil the requirements for the job or when none of the applicants has successfully passed the hiring test, the employer

- must submit a written report to the immigration authorities for assessment and recommendations, and requests the authorisation to recruit foreign employees; and
- the immigration authorities must provide their answer within 15 working days from the reception of the report and the request for authorisation.

If the employer fails to find a Rwandan employee with the required skills, they must:

- prove that they conducted a labour market test and failed to find a qualified Rwandan employee for the position;
- prove that the foreigner fulfils the requirements for that position; and
- submit to the immigration authorities a plan for transferring the foreigner's skills to Rwandan employees and an implementation plan.

Only when these conditions have been met can an employer hire a foreign worker based on a labour market testing.

Once a foreigner is hired, and regardless of how they were hired, the employer must:

- employ them for the job for which they were issued the residence permit;
- implement all the requirements and ensure skills transfer to Rwandan employees; and
- collaborate with the Labour Inspectorate regarding the occupation of foreigners.

For purposes of skills transfer between Rwandan and foreign employees, the employment contract of the foreigner must include the duty to train Rwandan colleagues. The Ministry in charge of Labour appoints a team in charge of monitoring the implementation of the rules governing the occupation of foreign workers.

Some specific rules regarding foreign workers may apply in specific sectors. For example, an employee ratio is applicable in the mining sector: at least 70% of the employees engaged must be Rwandans unless the company proves that no Rwandan has the required skills to perform the duties. It is therefore always advisable to verify any applicable collec-

tive bargaining agreement's provisions in this respect before contemplating hiring foreign workers.

When the employment contract with a foreigner is terminated, the employer must inform in writing the immigration authorities.

4.2 Registration Requirements for Foreign Workers

Foreigners willing to work in Rwanda are required to obtain a residency permit which allows them to reside and work in Rwanda. There are different categories depending on the job category. The permit application procedure is done online subject to payment of a fee. Provided that the Directorate General of Immigration and Emigration considers the requirements fulfilled, the permit is issued within ten days of application.

5. New Work

5.1 Mobile Work

The Ministerial Order of 13 June 2023 on working hours and public servants governed by employment contracts introduced a flexible working hour during which and employee:

- has the flexibility to schedule his/her work in a way that allows him/her to attend to personal or family affairs;
- is not obliged to be at his/her duty station; and
- may work remotely or report to his/her duty station in case of urgency.

Specifically, for public servants governed by the Labour Code, the hour between 8am and 9am is a flexible working hour. The same applies to employees in the private sector who are also entitled to a flexible working hour depending on when the day's work starts. In practice, employees in both private and public sectors are flexible regarding working from home or any other place as long as the employer has no objection and is informed.

5.2 Sabbaticals

Nothing is set out in the Rwandan Labour Code regarding sabbaticals.

5.3 Other New Manifestations

There is nothing specific, concerning “new work”, to be mentioned for this jurisdiction at this time.

6. Collective Relations

6.1 Unions

Right of Association

Employees and employers have the right to form unions or employers' associations, join a union or an employers' association of their choice and participate in lawful activities of the unions or the employers' associations.

Registration and Legal Capacity

Employees' and employers' associations are registered with the Minister in charge of Labour and must draft Articles of Association. They enjoy legal capacity after the publication of their Articles of Association in the Official Gazette of the Republic of Rwanda. They can therefore initiate legal proceedings, represent employees or employers, act within the limits of their Articles of Association and acquire movable or immovable property through donation or debt repayment. They can also enter into agreements amongst themselves at the national, regional or international levels.

6.2 Employee Representative Bodies

Role of Representative Bodies

Employees' representatives have the following responsibilities:

- to represent the employees in all matters related to work;
- to submit to the Labour Inspectorate any complaint or any issue relating to the application of laws;
- to ensure that laws relating to employees' health and safety are complied with and provide advice to ensure compliance;
- to provide opinions on measures and conditions on termination of employees due to lack of work or restructuring; and
- to inform and advise the employer on the smooth running of the work and on the improvement of production in the company.

Number of Delegates

A company with at least ten employees must organise elections for employees' representatives and their substitutes. The number of employees' representatives and their substitutes to be elected depends on the total number of employees within the company:

- one employees' representative and one substitute for companies employing between 10 and 29 employees;
- two employees' representatives and two substitutes for companies employing between 30 and 49 employees;
- three employees' representatives and three substitutes for companies employing between 50 and 99 employees;
- four employees' representatives and four substitutes for companies employing between 100 and 249 employees;
- five employees' representatives and five substitutes for companies employing between 250 and 499 employees;
- six employees' representatives and six substitutes for companies employing between 500 and 999 employees;
- seven employees' representatives and seven substitutes for companies employing between 1,000 and 1,499 employees;
- eight employees' representatives and eight substitutes for companies employing between 1,500 and 1,999 employees;
- nine employees' representatives and nine substitutes for companies employing between 2,000 and 2,500 employees; and
- ten employees' representatives and ten substitutes for companies employing more than 2,500 employees.

Elections

For companies with several branches in Rwanda, each branch employing at least ten employees must organise elections. The elected representatives and their substitutes are elected for a renewable term of three years and must comprise at least 30% women, where possible.

Within four weeks preceding the elections, the company management appoints an electoral committee,

composed of at least three employees. The electoral committee must be composed of an odd number of members, must comprise male and female employees where possible and must choose among its members the chairperson, the vice-chairperson, and the secretary. The electoral committee organises the elections, verifies the process and announces the result of the elections.

The employees' representatives are elected by two colleges – the college of staff and the college of managers – each of them having a list of voters. To be able to vote, the voter must:

- appear on the list of employees of the company;
- not have been deprived of the right to vote; and
- have been employed by the enterprise for at least six consecutive months before the elections (this condition does not exist for newly created companies).

Candidacies must be submitted to the employer between ten and three days before the elections. Candidates are allowed to campaign during working hours. The employees' representatives are elected through secret ballots in the premises of the company during working hours. An employee votes by signing or placing a fingerprint on the ballot paper in front of the name of the candidate they vote for and then places their ballot paper in a ballot box and signs in front of their name on the list of voters. Employees cannot vote on behalf of a colleague, even if they are given a power of attorney, except if they vote on behalf of a disabled employee.

Where there is no candidate, elections are postponed for a maximum period of seven working days.

Once the elections are completed, the electoral committee selects at least three people to help count the votes and then the votes are counted in public. It then makes a statement on the electoral operations and sends it to the employer, with a copy being sent to the District Labour Inspectorate. This statement mentions at least the name of the company and registered office, the number of all employees, the number of voters, the exact number of votes obtained by each candidate and the names of the elected employees'

representatives. The electoral committee publishes and posts the results of election on the company notice board within two days after the elections.

Rectification of Voting Results

The electoral committee may nullify the election if it was carried out in violation of the law. In such case, another election takes place within 20 days from the day of annulment.

Complaints

An employee or a member of a union may lodge a complaint on elections results to the electoral committee within 48 hours after publication of the elections results. The electoral committee must rule within 72 hours. Where the outcome is not satisfactory, the complaint is submitted to the District Labour Inspectorate within the next three working days, and the Inspectorate must rule within two days of receipt of the complaint. Where it is still not resolved, the complaint is submitted to the Minister in charge of labour within five days, who in turn rules within one month.

6.3 Collective Bargaining Agreements

A collective bargaining agreement is defined as a written agreement relating to employment conditions or any other mutual interests between employees' organisations or employees' representatives where there are no such employees' organisations on the one hand, and one or more employers or employers' organisations, on the other hand. They can be entered into for a definite or indefinite period.

The employees' organisations and employers' organisations designate a committee in charge of negotiations of the collective bargaining agreements on their behalf.

To be valid, a collective bargaining agreement must at least include provisions relating to the following:

- conditions of recruitment of an employee and termination of contract;
- employee's right of joining trade unions and freedom of opinion;
- professional categories;

- salary applicable to each professional category, overtime and its compensation rate, the duration of the probation period and notice;
- paid leave, seniority allowance and transport allowance;
- conditions of modification of all or part of the collective bargaining agreement;
- methods of dispute resolution; and
- commencement of the collective bargaining agreement.

Parties to the negotiation of a collective bargaining agreement negotiate in good faith. If, in a company, there are representatives of several employees' organisations, they team up to carry on collective negotiations. If they fail to do so, the employees' organisation representing the majority of the employees will lead the negotiations on behalf of the others. Once negotiated, the collective bargaining agreement is entered into in writing and signed by the parties. Once signed, the employer must inform all the concerned employees about the collective bargaining agreement.

7. Termination

7.1 Grounds for Termination

Grounds for Termination

The Rwandan Labour Code states that dismissals must be justified by legitimate reasons but does not define such reasons. In practice, employers are required to mention the reasons for dismissal in writing in the notice letter and must be able to prove them in case of legal proceedings.

The termination procedure does not differ depending on the reason for termination. However, additional compensation is payable in the event of dismissal for economic reasons or due to the employee's illness (see below).

Termination Formalities

Any termination must be notified in writing by the party who takes the initiative, to the other party. Where termination is at the employer's initiative, the letter of notification must expressly state the reasons for dismissal. There is no motivation regime a posteriori.

The notice period is not required if mutually agreed between the parties.

An employer can conduct an administrative investigation against an employee, which could result in the suspension of the contract and potentially lead to dismissal. In such case, the employer can suspend the employee in writing for 30 days without payment, but the employee's salary is calculated and retained. If, after the investigation, the employee's innocence is proven, the employer reinstates the employee and pays them all their retained salary.

A fixed-term employment contract can be terminated before its term if mutually agreed by the parties or if the party wishing to terminate it has legitimate reasons. Although not specifically mentioned in the Rwandan Labour Code, the party who terminates the fixed-term employment contract before the end of its term will have to comply with the applicable notice period.

Termination of an open-ended employment contract without a legitimate reason entitles the employee to damages amounting to between three and six months of net salary, or up to nine months of net salary if the employee has more than ten years' experience with the same employer or if the employee is an employees' representative.

Any dismissal based on economic reasons, technological transfer or sickness (after a sick leave of six months if they are unable to resume work) for an employee with at least 12 consecutive months of service, entitles the employee to a termination allowance as follows:

- two times the average monthly salary for an employee with less than five years of service with the same employer;
- three times the average monthly salary for an employee having between five and ten years of service with the same employer;
- four times the average monthly salary for an employee having between ten and 15 years of service with the same employer;

- five times the average monthly salary for an employee having between 15 and 20 years of service with the same employer;
- six times the average monthly salary for an employee having between 20 and 25 years of service with the same employer; or
- seven times the average monthly salary for an employee having more than 25 years of service with the same employer.

Such termination allowance must be paid within seven working days of the dismissal. The average monthly salary is obtained by dividing by 12 the total salary the employee has received for the last 12 months, exclusive of allowances.

Collective Redundancies

The employer may, after informing employees' representatives, proceed with collective dismissal due to the company's internal reorganisation or restructuring due to economic reason or technological transfer. The collective dismissal must aim to preserve the company's competitiveness.

The employer must inform in writing the competent Labour Inspectorate and follow an order of dismissal, taking into consideration the performance, professional qualification, experience in the company and the employees' legally recognised dependants. A worker dismissed for economic or technical reasons keeps priority for recruitment within six months of dismissal if they have the required profile for the vacancy.

7.2 Notice Periods

Notice Period

Subject to more favourable provisions in a collective bargaining agreement, rules of procedure or employment contract, the notice period is equal to:

- at least 15 days for an employee with less than one year of service; or
- at least 30 days for an employee with more than one year of service.

Longer notice periods are rare in practice.

Notice must be given in writing and state the reasons for the termination. Notice cannot be given:

- if the employment contract is suspended; and
- if the employee is on leave.

During the notice period, the employer and the employee remain bound by all their contractual obligations. During the same period, the employee is entitled to one paid day off per week to find a new position.

During an employee's probation period, an employer may terminate the employee's contract without notice.

Indemnity in Lieu of Notice

Termination of an open-ended contract without notice or without full observance of the notice period will entail the payment of an indemnity in lieu of notice, corresponding to the remuneration that the employee would have received during the (part of the) notice period that was not granted.

Specific Procedure

There is no specific procedure to be followed nor external advice or authorisation required to proceed with dismissals.

7.3 Dismissal for (Serious) Cause

An employment contract can be terminated without notice for gross misconduct. In that case, the employer must notify the employee within 48 hours of the occurrence of evidence of the gross misconduct, specifying the grounds for termination.

A Ministerial Order lists acts that are considered gross misconduct:

- theft;
- fraud;
- fighting at workplace;
- taking alcoholic drinks at workplace;
- to be on duty under the influence of alcohol or drugs;
- falsification;
- any form of discrimination at workplace;
- sexual harassment;
- soliciting, offering, or receiving bribes or illicit benefit;
- embezzlement;
- unlawfully obtaining or disclosing professional confidential information;

- behaviour that may endanger the health and safety of others at workplace;
- gender-based violence at workplace;
- illegal strike; and
- intentional destruction of work equipment.

A company may determine a list of other acts or behaviour considered as gross misconduct. Before its implementation, this list must be approved by the Minister in charge of labour, incorporated in the rules of procedure (if the company is required to adopt rules of procedure, ie, if it employs more than five employees) and notified in writing to the employees.

As with dismissal with notice, an employer can conduct an administrative investigation against an employee, which could result in suspension of the contract and potentially lead to dismissal for gross misconduct. In such case, the employer can suspend the employee in writing for 30 days without payment, but the employee's salary is calculated and retained. If, after the investigation, the employee's innocence is proven, the employer reinstates the employee and pays them all their retained salary.

In case of dismissal for gross misconduct, the employment contract will be immediately terminated, without notice.

7.4 Termination Agreements

Any employment contract may be terminated by mutual consent. There are no specific requirements involved. There are no statutory requirements for enforceable releases or other limitations on termination agreement terms as long as they comply with public order.

7.5 Protected Categories of Employee

The Rwandan Labour Code does not provide for a specific regime of protection (eg, entitling employees to a certain compensation (lump sum) for a dismissal that would have been based on protected criteria). However, it includes some provisions that aim to protect some categories of employees against dismissal.

For example, it is prohibited to dismiss:

- an employee for having reported or testified on sexual harassment committed by their supervisor;
- an employee as a result of occupational accident, unless a recognised doctor declares the employee unfit to resume service in the employment they held prior to the accident;
- a female employee during her maternity leave; or
- an employees' representative, based on fulfilment of their duties.

Dismissals in breach of these protections will be deemed unfair dismissals, entitling the employees to damages amounting to between three and six months of net salary, or up to nine months of net salary if they have more than ten years of experience with the same employer. For employees' representatives, occupational health and safety committee members and trade union representatives dismissed for fulfilling their duties, they are entitled to damages amounting to up to nine months of net salary, regardless of their years of service.

8. Disputes

8.1 Wrongful Dismissal

In addition to the protections against dismissal set out previously, the Rwandan Labour Code prohibits dismissals:

- when the employment contract is suspended as a result of one of the following:
 - (a) strike or lock-out;
 - (b) disciplinary lay-off for eight working days;
 - (c) an employee is sentenced to an imprisonment not exceeding six months;
 - (d) in case of suspension of the company's activities as a result of economic or technical difficulties;
 - (e) suspension for administrative purposes; or
 - (f) suspension of the company's activities due to force majeure; and
- when the employee is on leave.

In the event that a dismissal is decided in one of these circumstances, or based on an invalid ground for dis-

missal, it will be deemed unfair, entitling the employees to damages amounting to up to nine months of net salary, depending on their years of service or their capacity. Employers must be careful when dismissing an employee and make sure that they have a valid ground for dismissal.

8.2 Anti-Discrimination

The Rwandan Labour Code states that an employer must give employees equal opportunities at the workplace. An employer is prohibited from discriminating against employees on the basis of ethnic origin, family or ancestry, clan, skin colour or race, sex, region, economic categories, religion or faith, opinion, fortune, cultural difference, language, physical or mental disability, or any other form of discrimination. Every employer must pay employees equal salary for work of equal value without discrimination of any kind.

The constitutional principle of non-discrimination is also applied in certain specific employment laws, such as the law on trade union delegates, specifying that candidates to social elections within the company must be treated equally.

Nothing is mentioned in the Rwandan Labour Code regarding the burden of proof. It may reasonably be assumed that it is the employee invoking discrimination who must prove that they are effectively a victim of discrimination. Employees could claim compensation before courts.

8.3 Digitalisation

There is no regulation regarding the digitalisation of employment disputes in Rwanda.

9. Dispute Resolution

9.1 Litigation

There are no specialised employment forums, and class actions are not available as such. Parties can always be assisted by a lawyer for legal proceedings, either before the Labour Inspectorate or the labour courts.

9.2 Alternative Dispute Resolution

The Labour Code sets out the procedure for resolving labour disputes and requires that an individual labour dispute between an employer and an employee must first be attempted by employees' representatives who will try to resolve the dispute amicably. Failing this, the dispute must be referred to the labour inspectorate of the area where the enterprise is located. If the labour inspector fails to resolve the matter, he/she must refer the matter to the labour inspector at the national level. Should both labour inspectors fail to resolve the dispute, such dispute must be referred to the competent court. These steps are mandatory and the competent court may refuse to receive the case if the above steps have not been followed. Although not entirely clear, Rwandan arbitration law is supposed to apply only to commercial matters. In any case, and although nothing expressly prevents the parties from including an arbitration clause in their employment contract, this is not frequent at all in practice, and not recommended given the often extremely high costs of arbitration compared to the average worker's salary.

9.3 Costs

A prevailing employee can claim for, and therefore can be awarded, representation fees. The labour court will analyse this incidental claim at the same time as the principal claim.

SINGAPORE



Law and Practice

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top government agencies and foreign governments in landmark, high-profile cases. It is also appointed by Fortune 500 companies, multinational corporations, and local organisations. The firm is experienced in international disputes before the Singapore International Commercial Court and covers the full range of commercial litigation matters, including building and construction, constitutional law, debt recovery, defamation, fraud, and white-collar crime.

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1. Employment Terms

1.1 Employee Status

An employee is a person who has entered into or works under a contract of service with an employer. On the other hand, a person who has entered into a contract for service is not an employee. Whether a person is an employee is determined by a flexible and fact-sensitive approach that considers, holistically, the parties' working relationship with reference to factors such as the employer's control over the person's work and whether the person's work forms an integral part of the employer's business.

The Employment Act generally covers all employees (subject to very limited exceptions), but additional statutory protection of certain employment terms and benefits under Part IV of the Employment Act only applies to classes of employees who are considered more vulnerable in their ability to negotiate their terms of employment, as follows:

- workmen (ie, employees whose work mainly involves manual labour) earning a basic monthly salary of not more than SGD4,500; and
- employees (other than a workman or a person employed in a managerial or an executive position) earning a basic monthly salary of not more than SGD2,600.

Platform Workers

Based on the recently introduced Platform Workers Act which came into force on 10 January 2025, platform workers will be recognised as a distinct and separate group of workers. Due to the flexible nature

of their work, platform workers are neither classified as employees nor self-employed. For more details on platform workers and the ongoing efforts to protect their interests, see **5.3 Other New Manifestations**.

1.2 Employment Contracts

An employment contract may be for a fixed or indefinite period.

Key Employment Terms

An employer is required to provide employees (other than transient employees) with written records of at least the key employment terms, which include:

- employer's full name;
- employee's full name;
- job title, main duties and responsibilities;
- start date of employment;
- duration of employment;
- working arrangements, such as daily working hours, number of working days per week and rest days;
- salary period;
- basic rate of pay;
- fixed allowances;
- fixed deductions;
- overtime payment period;
- overtime rate of pay;
- other salary-related components such as incentives and bonuses;
- leave entitlement;
- medical benefits;
- probation period; and
- notice period for dismissal or termination.

Any term of an employment contract which is less favourable than the conditions of service prescribed by the Employment Act for an employee covered under the Act is deemed to be illegal, null and void to the extent that it is less favourable.

Terms Implied in Law

In addition to the agreed employment terms, there is some indication that the Singapore courts are likely to recognise that an implied duty of mutual trust and confidence exists between employer and employee.

1.3 Working Hours

Working Hours and Overtime Regulations

Employees whose terms of employment are protected by the Employment Act (see **1.1 Employee Status**) are not required to work more than:

- six consecutive hours without a period of leisure; or
- eight hours a day, or more than 44 hours a week.

If an employer requires a protected employee to work overtime, the employer has to pay the employee at least 1.5 times the employee's hourly basic rate of pay.

In addition, a protected employee is not allowed to work overtime for more than 72 hours in a month. Working on a rest day or public holiday does not count towards the 72-hour overtime limit except for work done beyond the usual daily working hours on those days.

Part-Time Employment

An employee who is required to work fewer than 35 hours a week is considered a part-time employee. Part-time employees covered under the Employment Act are entitled to the same rights and benefits as full-time employees, but their statutory entitlements (eg, to annual leave, sick leave and maternity leave) are prorated.

Flexible Working Arrangements

The Tripartite Alliance for Fair and Progressive Employment Practices (TAFEP) – a body with representatives from the government, trade unions and employers – encourages employers to enable flexible working arrangements, which have become more accepted in the workplace.

In April 2024, the Ministry of Manpower (MOM) announced that all ten recommendations by the Tripartite Workgroup on the Tripartite Guidelines on Flexible Work Arrangement Requests (the “FWA Guidelines”) have been accepted by the government. Employers are expected to abide by the mandatory FWA Guidelines, which came into effect on 1 December 2024. The FWA Guidelines are aimed at making it easier for employees to request flexible work arrangements, while acknowledging that employers continue to have the prerogative to decide on work arrangements.

The FWA Guidelines establish how formal flexible work arrangements requests should be made, how employers should consider such requests in a proper manner, and the requirement for employers to communicate decisions on such requests in a transparent and timely manner.

1.4 Compensation

No Minimum Wage – Progressive Wage Model

There is no general minimum wage in Singapore. However, employers in certain prescribed sectors which employ low-wage employees are required to implement a progressive wage model (PWM).

In respect of each sector, the PWM provides minimum basic wage requirements, minimum annual increases as well as the necessary certifications and qualifications that employees in these sectors would need to secure a higher minimum wage under the PWM. The Singapore government is seeking to expand the PWM to cover more sectors over time.

National Wages Council

The National Wages Council is a tripartite body comprising representatives from employers, trade unions and the government. It formulates wage guidelines in line with Singapore's long-term economic growth, which are used by both unionised and non-unionised companies as a framework or reference point to determine wage increases for their employees. The guidelines are recommendations, not legal requirements.

Bonuses

Bonuses are payable depending on contractual terms and employers' discretion.

Annual Wage Supplement

The MOM encourages employers to give employees an annual wage supplement (AWS) comprising a single annual payment on top of an employee's total annual wage, also known as a 13th-month bonus. The AWS is not compulsory, unless it is provided for in the employment contract.

Central Provident Fund (CPF) Contributions

During the 2023 Budget, it was announced that the Central Provident Fund (CPF) monthly salary ceiling will be increased. The increment will take place in four stages to allow employers and employees to adjust to the changes. The increment is as follows:

- from 1 September to 31 December 2023 – SGD6,300;
- from 1 January to 31 December 2024 – SGD6,800;
- from 1 January to 31 December 2025 – SGD7,400; and
- from 1 January 2026 – SGD8,000.

There will be no change to the current CPF annual salary ceiling of SGD102,000. This will be reviewed periodically to ensure that it continues to cover about 80% of employees.

To keep pace with rising wages and to strengthen the retirement preparedness of senior employees, there will also be changes to the CPF ordinary wage ceiling and contribution rates. As of 1 January 2025, the current contribution rates are as follows:

- for employees aged 55 and below, the contribution rate is 37% of wages (17% from the employer and 20% from the employee);
- for employees aged 56–60, the contribution rate is 32.5% of wages (15.5% from the employer and 17% from the employee);
- for employees aged 61–65, the contribution rate is 23.5% of wages (12% from the employer and 11.5% from the employee);
- for employees aged 66–70, the contribution rate is 16.5% of wages (9% from the employer and 7.5% from the employee); and
- for employees aged 71 and above, the contribution rate is 12.5% of wages (7.5% from the employer and 5% from the employee).

1.5 Other Employment Terms

Public Holidays

Employees are entitled to paid holidays on public holidays. If the public holiday falls on a non-working day, employees will be entitled to another day off or one extra day's salary in lieu of the public holiday. If an employee is required to work on a public holiday, the employee is entitled to another day off, time off (only for employees not covered under Part IV of the Employment Act), or one extra day's salary.

Annual Leave

At the minimum, the Employment Act requires that employees who have worked for their employer for at least three months are entitled to seven days of paid annual leave within the first 12 months of continuous service with that same employer.

Thereafter, employees are entitled to one additional day of paid annual leave for every subsequent year of continuous service with the same employer, subject to a maximum of 14 days' paid annual leave.

Sick Leave

The Employment Act requires that employees who have worked for at least three months are entitled to paid outpatient sick leave and paid hospitalisation leave.

Employees who have worked for at least six months are entitled to 14 days of paid outpatient sick leave in each year and 60 days of paid hospitalisation leave. The amount of paid outpatient sick leave and paid hospitalisation leave is capped at the amount of the employee's sick leave entitlement.

Where an employee has worked for an employer for less than six months but for at least three months, the employee's entitlement to paid outpatient sick leave and paid hospitalisation leave ranges from five to 11 days and 15 to 45 days respectively, depending on the length of service.

Maternity Leave

Under the Child Development Co-Savings Act 2001 (CDCA), female employees are entitled to 16 weeks of paid maternity leave provided that:

- the employee has worked for her employer for a continuous period of at least three months before the birth of her child; and
- the child is a Singapore citizen at the time of birth or becomes one within 12 months from the date of birth.

If an employee is not entitled to maternity leave under the CDCA, she will be entitled to 12 weeks of maternity leave provided that:

- the employee is covered under the Employment Act; and
- the employee has worked for her employer for at least three months before the birth of her child.

Eight of those 12 weeks of maternity leave will generally be paid leave unless, at the time of delivery, the employee has two or more living children and those children were born during more than one previous confinement.

Paternity Leave

Under the CDCA, male employees with children born on or after 1 April 2025 are entitled to four weeks of government-paid paternity leave.

A natural father will be eligible, provided that:

- the child is a Singapore citizen at the time of birth or becomes one within 12 months from the date of birth;
- the employee has worked for his employer for at least three months before the birth of the child; and
- the child's mother is lawfully married to the child's natural father at the time the child is conceived, or becomes lawfully married to the child's natural father before the child's birth, or becomes lawfully married to the child's natural father within 12 months from the date of the child's birth.

An adoptive father will be eligible, provided that:

- the employee's Formal Intent to Adopt (FIA) date is on and after 1 January 2017;
- the child is below 12 months of age on the FIA date;

- the employee has worked for his employer for at least three months before the FIA date; and
- the child is a Singapore citizen, or either the adoptive father or his wife has been a Singapore citizen since the date on which the dependant's pass is issued.

Shared Parental Leave

Under the CDCA, parents of children born on or after 1 April 2025 are entitled to six (from 1 April 2025) or ten (from 1 April 2026) weeks of shared parental leave (SPL). This replaces the previous scheme where a working mother can share up to four weeks of her government-paid maternity leave with her husband.

By default, the SPL will be equally distributed between the parents. Working parents can choose to reallocate their SPL according to their needs.

Natural parents will be eligible if:

- the child is born on or after 1 April 2025;
- the child is a Singapore citizen or becomes one within 12 months from the date of birth;
- they have worked for their employer for at least three months before the birth of the child; and
- in the case of natural fathers, if they are married to the mother when the child was born, or at some point between conception and the child's birth, or within 12 months from the child's birth.

Adoptive parents will be eligible if:

- their FIA date is on or after 1 April 2025;
- the child is below 12 months old on the FIA date;
- they have worked for their employer for at least three months before the FIA date; and
- in the case where the child is not a Singapore citizen, either the adoptive mother or father has been a Singapore citizen since the date on which the child's dependant's pass is issued.

Paid Childcare Leave

Under the CDCA, both male and female employees are entitled to up to six days of paid childcare leave within a period of 12 months depending on their length of service, provided that:

- the employee has worked for the employer for at least three months;
- the employee has a child that is below seven years old; and
- the child is a Singapore citizen.

The CDCA also provides that both male and female employees are entitled to two days of paid extended childcare leave within a period of 12 months, provided that:

- the employee has worked for the employer for at least three months;
- the employee has a child that is between seven and 12 years old (inclusive); and
- the child is a Singapore citizen.

However, an employee is not entitled to more than six days of childcare leave and extended childcare leave within a period of 12 months.

If an employee is not entitled to childcare leave under the CDCA, an employee covered by the Employment Act is entitled to two days of paid childcare leave within a period of 12 months provided that:

- the employee is covered under the Employment Act;
- the employee has worked for the employer for at least three months; and
- the employee has a child that is below seven years old.

Unpaid Infant Care Leave

Under the CDCA, employees are entitled to a maximum of 12 days of unpaid childcare leave within a period of 12 months, regardless of the number of children, provided that:

- the employee has worked for the employer for at least three months;
- the employee has a child that is below two years old; and
- the child is a Singapore citizen.

An employee's entitlement to unpaid infant care leave is in addition to the entitlement to paid childcare leave.

2. Restrictive Covenants

2.1 Non-Competes

Post-termination restrictive covenants, such as non-compete and non-solicitation clauses, which impose restrictions on an employee after they have ceased working for their employer, are enforceable if they satisfy the following criteria.

- The clause protects a legitimate proprietary interest, such as a trade secret, trade connection or a stable workforce.
- The clause is reasonable between the parties concerned (ie, the employer and employee), including in terms of the scope of limitation, geographical area of limitation and the period of limitation. This may also include whether consideration was paid in return for the clause, or whether it was negotiated between the parties.
- The clause is reasonable with reference to the public interest.

The reasonableness of a restrictive covenant is assessed at the time the contract was made.

The reasonableness of a restrictive covenant will also be assessed with reference to other restrictive covenants in the employment contract. For example, if an employment contract contains a confidentiality clause and a non-solicitation clause, a court may take the view that the employer's legitimate proprietary interest regarding its trade secrets and trade connections is sufficiently protected, and that a non-compete obligation on the employee is an unreasonable prohibition on competition, unless it can be shown that there is some other reason that necessitates the non-compete clause. This may be the case if it can be shown that the particular circumstances are such that it is much more difficult to enforce the non-solicitation clause or confidentiality clause compared to the non-compete clause.

If a restrictive covenant is found to be too wide, the court may apply a "blue pencil" test to sever parts of the clause that are unjustified. This can only be done if no words need to be altered or added and the remaining words of the clause continue to make grammatical sense.

However, it should be noted that a restrictive covenant containing cascading restrictions that are intended to accommodate the blue pencil test, or the insertion of a modification clause that provides that restrictions will be modified in order to make the covenant valid, may not save an otherwise unenforceable restrictive covenant.

The MOM and tripartite partners are currently developing a set of tripartite guidelines to shape norms and provide employers with further guidance on the inclusion of restrictive covenants in employment contracts. The MOM has said that employers should generally avoid including restrictive covenants in employment contracts for lower-paying jobs.

Enforcement

If an employee breaches a restrictive covenant, an employer can apply to court for an injunction to restrain the employee from continuing the breach. The employer can also seek damages.

The employer may also have a claim against the new employer if the new employer has induced the employee to breach the restrictive covenant clauses.

However, a restrictive covenant cannot be enforced by employers who have themselves committed a repudiatory breach of the contract that is accepted by the employee. Therefore, an employer who has wrongfully dismissed an employee cannot enforce any non-compete or non-solicitation clause.

Employees who believe that they are affected by unreasonable or unjustified restrictive covenants may seek assistance from their unions, TAFEP or MOM.

2.2 Non-Solicits

The principles regarding restrictive covenants discussed in 2.1 **Non-Competes** apply to non-solicitation clauses.

Non-Solicitation of Customers

Clauses prohibiting the solicitation of customers protect an employer's legitimate proprietary interest in its trade connections. For such clauses to be enforceable, there must be personal knowledge of and influence over the customers of the employer.

Non-Solicitation of Employees

Clauses prohibiting the solicitation of employees protect an employer's legitimate proprietary interest in maintaining a stable and trained workforce. The reasonableness, and consequently the enforceability, of such clauses may turn on whether the former employee has influence over the categories of employees that they are restricted from soliciting.

3. Data Privacy

3.1 Data Privacy Law and Employment Applicability of the PDPA

There is no employment-specific data privacy law. In general, employee personal data is governed by the general data protection legislation in Singapore – ie, the Personal Data Protection Act 2012 (PDPA).

The PDPA governs the processing of individuals' personal data by private sector organisations and is administered and enforced by the Personal Data Protection Commission (PDPC).

Under the PDPA, personal data is defined as data, whether true or not, about an individual who can be identified from that data, or from that data in conjunction with other information to which the organisation has or is likely to have access. This would include the personal data of employees (full time and part time) and job applicants.

Need to Obtain Consent From Individuals

The PDPA requires organisations to obtain consent before collecting, using or disclosing an individual's personal data, unless otherwise required or authorised under written law, or an exception under the PDPA applies ("consent obligation").

Consent is validly given if the employer has provided the individual with information regarding the purposes for the collection, use or disclosure of the personal data (as the case may be) on or before collecting the personal data ("notification obligation").

Exceptions to Consent

Section 95 of the Employment Act requires all employers to maintain detailed employment records of

employees covered under the Employment Act, which includes the employees' identity card number or foreign identification number, residential address, date of birth, gender, and other relevant information as specified under the Employment (Employment Records, Key Employment Terms and Pay Slips) Regulations 2016. Thus, to the extent that the collection of personal data is authorised or required under these laws, employers may collect such employee personal data without employees' consent.

For example, under Section 17 of the PDPA, read with Part 3 of the First Schedule to the PDPA, employers may collect, use and disclose employee personal data without consent where:

- the collection, use or disclosure of the employee's personal data is for the purpose of or in relation to –
 - (a) entering into an employment relationship with the individual or appointing the individual to any office, or
 - (b) managing or terminating an employment relationship; or
- the collection, use or disclosure of personal data is necessary for evaluative purposes (ie, for the purpose of determining the suitability, eligibility or qualifications of the individual for employment, appointment to office, promotion, removal, etc).

For job applicants, deemed consent may also apply when they voluntarily provide their personal data to the organisation during the application process, provided it was reasonable for them to have been asked to provide such data.

Need to Notify Employees of Collection

However, while consent may not be required in certain scenarios, the employer is still required to notify the individual of the purpose of such collection, use or disclosure, and, on request by the individual, the business contact information of a person who is able to answer the individual's questions relating to such processing.

For new and existing employees, organisations may choose to provide them with notice of such collection, use or disclosure in the employment contract,

employee privacy policy, employee data protection handbook, or data protection notices on the company intranet. For job applicants, organisations may include a data protection notice in the job application form.

Other Obligations Under the PDPA

Employers must also comply with several other data protection obligations under the PDPA, as set out below.

Purpose limitation obligation

Employers must only collect, use or disclose employee personal data for purposes that a reasonable person would consider appropriate in the circumstances.

Access and correction obligation

While there is a general requirement for organisations to provide individuals with the right to access and correct their personal data, there are some exceptions to this requirement. For example, employers do not need to provide job applicants with the opinions formed in the course of determining the applicant's suitability and eligibility as this would be considered opinion data kept solely for evaluative purposes.

Retention limitation obligation

While employers can retain the personal data of former employees and job applicants for future job opportunities, they should not retain such personal data if it no longer serves the purpose for which it was collected and if it is no longer necessary for legal or business purposes. This includes the minimum statutory retention period under the Employment Act.

Accuracy obligation

Employers must make reasonable efforts to ensure the accuracy and completeness of employee personal data.

Protection obligation

Employers must protect the employee personal data that they possess or control by making reasonable security arrangements to prevent unauthorised access, collection, use, disclosure, copying, modification, disposal or similar risks, as well as the loss of storage mediums or devices on which personal data is stored.

Transfer limitation obligation

Employers must not transfer employee personal data to a jurisdiction outside Singapore except in accordance with the requirements set out in the PDPA and the Personal Data Protection Regulations 2021, to ensure that transferred personal data is accorded a standard of protection comparable to the PDPA.

Data breach notification obligation

In the event of a data breach involving employee personal data, employers must assess whether a data breach is notifiable and notify the PDPC and/or affected individuals where it is assessed to be notifiable.

Accountability obligation

Employers must appoint a person responsible for ensuring compliance with the PDPA (typically called a data protection officer). Employers must also implement the policies and practices necessary to meet their PDPA obligations, including a process to receive complaints. In addition, employers must communicate information about such policies and practices to their employees and make such information available upon their request.

4. Foreign Workers

4.1 Limitations on Foreign Workers

Foreigners must generally have a valid work pass before they start work in Singapore.

Employing a foreigner without a valid work pass is an offence. Where a foreigner without a work pass is found at any premises, the occupier of the premises is presumed to have employed the foreigner, until the contrary is proved.

Types of Work Passes

There are three main types of work passes.

Employment Pass

The Employment Pass (EP) is for foreign professionals, managers and executives who earn at least SGD5,600 a month in the non-financial services sectors and SGD6,200 a month in the financial services sector and have acceptable qualifications. Older, more experienced candidates will require higher sala-

ries to qualify (the qualifying salaries increase progressively with age, up to SGD10,700 for a candidate in their mid-forties in a non-financial sector and up to SGD11,800 for a candidate in the financial services sector). This is the revised minimum qualifying salary for new applications from 1 January 2025 and renewals of passes expiring from 1 January 2026.

For the renewal of passes expiring from 1 January 2025 to 31 December 2025, the minimum qualifying salary is SGD5,000 a month in the non-financial services sectors and SGD5,500 a month in the financial services sector.

Aside from meeting the qualifying salary, candidates will also need to pass a points-based Complementarity Assessment Framework (COMPASS). COMPASS is an additional stage in the EP application process; that is, candidates must pass a two-stage eligibility framework – stage 1 being the above-mentioned EP qualifying salary, and stage 2 being COMPASS. COMPASS evaluates EP applications based on a holistic set of individual and firm-related attributes, and applicants are scored on four foundational criteria (ie, salary, diversity, qualifications and support for local employment). There are also two bonus criteria: a skills bonus (for candidates in jobs where skills shortages exist) and a strategic economic priorities bonus (for partnerships with the Singapore government on ambitious innovation or internationalisation activities).

There are certain exemptions to COMPASS; that is, a candidate will be exempted from COMPASS if they fulfil any of the following conditions:

- they earn at least SGD22,500 a month (similar to the prevailing Fair Consideration Framework job advertising exemption);
- they apply as an overseas intra-corporate transferee under the World Trade Organization's General Agreement on Trade in Services or an applicable free trade agreement to which Singapore is a party; or
- they fill a role on a short-term basis (ie, for one month or less).

MOM has released a self-assessment tool for employers to use in order to get an indicative outcome for

each EP application, including performance on the EP qualifying salary and COMPASS (with breakdown of scores by criterion).

Generally, employers submitting EP applications must first advertise the job vacancy on the national jobs bank, [MyCareersFuture](#), for at least 14 calendar days and consider all candidates fairly.

S Pass

The S Pass is for foreign mid-level skilled staff who earn at least SGD3,150 a month in the non-financial services sector and SGD3,650 a month in the financial services sector, and they meet the assessment criteria in terms of qualifications and work experience. Older, more experienced candidates will require higher salaries to qualify (the qualifying salaries increase progressively with age, up to SGD4,650 for a candidate in their mid-forties in the non-financial services sector, and up to SGD5,650 for a candidate in the financial services sector). The qualifying salaries mentioned above apply to new applications and renewals from 1 September 2024.

The minimum qualifying salary will be revised to at least SGD3,300 in the non-financial services sectors and at least SGD3,800 a month in the financial services sector for new applications from 1 September 2025, and for renewals from 1 September 2026. Older, more experienced candidates will require higher salaries to qualify (up to SGD4,800 for a candidate in the non-financial services sector, and up to SGD5,650 for a candidate in the financial services sector).

Employers are limited by a quota and subject to a levy for each S Pass-holder employee.

Generally, employers submitting S Pass applications must first advertise the job vacancy on the national jobs bank, [MyCareersFuture](#), for at least 14 calendar days and consider all candidates fairly.

Work Permit

The Work Permit is generally for foreign semi-skilled workers in the construction, manufacturing, marine shipyard, process or services sector. There is no minimum salary for employees on a Work Permit, but employers are limited by a quota and subject to

a levy. Depending on the sector, there may also be restrictions based on source country or region, minimum age, maximum period of employment and other restrictions.

4.2 Registration Requirements for Foreign Workers

Applications for work passes are made to the MOM. When making work pass applications, the prospective employer needs to get the worker's written consent.

When making an EP application, the prospective employer needs to provide particulars of the foreign worker's passport, the foreign worker's educational certificates and the employer's latest business profile information. Employers are required to verify educational qualifications submitted to the MOM in support of an EP application. The verification can be done through selected background screening companies, which are listed on the MOM's website. Alternatively, the MOM will also accept verification proof obtained from online portals of countries' governments, the Center for Student Services and Development for qualifications from China, or letters of qualification from professional bodies. Digital certificates issued by selected educational institutions and verified through the OpenCerts portal may also be accepted.

For Work Permit applications and S Pass applications, the employer is required to buy and maintain medical insurance as follows.

- For policies with start date effective before 1 July 2023 – providing coverage of at least SGD15,000 per year.
- For policies with start date effective on or after 1 July 2023 – providing coverage of at least SGD60,000 per year.

When making a Work Permit application, the employer is required to post a SGD5,000 security bond for each worker (with the exception of Malaysians).

5. New Work

5.1 Mobile Work

Under the Workplace Safety and Health Act 2006 (WSHA), the “workplace” is defined in Section 5 (1) as any premises where a person is at work or is to work, where a person works for the time being, or customarily works, and includes a factory.

With increased recognition of Flexible Work Arrangements (FWAs) (see **1.3 Working Hours**), organisations are more open to allowing their employees to do their work away from conventional offices. In a case study published by TAFEP, it was found that FWAs are key to hiring and retaining talent.

As such, workplaces may possibly extend to locations outside the office. This would include mobile working where employees are often required to be on the move to carry out their job.

Work Injury

An employer is liable to pay compensation under the Work Injury Compensation Act 2019 (WICA) where the employee suffers from a work injury arising out of and in the course of their employment. Hence, based on the wording of the WICA, the place where the work injury was suffered does not appear to matter and employees engaged in mobile working would likely be covered under the WICA.

In fact, Section 9 of the WICA provides that employers are even held liable for accidents happening to employees outside Singapore if the employee is ordinarily resident in Singapore and is employed by an employer in Singapore but is required to work outside Singapore.

Data Privacy

As mentioned in **3.1 Data Privacy Law and Employment**, the PDPA contains a transfer obligation. Hence, where employees are posted to an overseas office such as for an overseas assignment and personal data of that employee is transferred to the overseas office, the local office transferring that data must ensure that the overseas office provides a standard of protection to the personal data that is comparable to its protection under the PDPA.

Social Security

CPF contributions are payable if the employee is employed in Singapore but is required to go overseas for an assignment, such as an overseas business trip or training.

5.2 Sabbaticals

A sabbatical leave is an extended period of leave taken for personal reasons such as for further studies, travelling or to rest.

There is no statutory requirement for sabbatical leave in Singapore, and the offering of sabbatical leave is a matter of contractual agreement.

Employers may allow for a sabbatical in the form of non-statutory leave, which is an additional provision to cater to an employee’s welfare. Employers may decide to offer fully paid, part-paid or unpaid sabbatical leave. Typically, sabbatical leave would be provided to employees who have had a long period of service. The duration of the leave would depend on the employer. Typically, an employee would be entitled to a period of two months to a year, continuing their employment upon their return from the sabbatical.

An example is the National Council of Social Services’ (NCSS) Sabbatical Leave Scheme that allows application for up to ten weeks of paid leave for a sabbatical. The NCSS Sabbatical Leave Scheme is available to social workers, therapists (occupational therapists, physiotherapists and speech therapists), psychologists, counsellors and EIPI (Early Intervention Programme for Infants and Children) teachers.

5.3 Other New Manifestations

FWAs

FWAs include working arrangements that differ from traditional arrangements of fixed daily work hours at the workplace. FWAs are usually offered by employers to enable their employees to better manage work as well as family and personal responsibilities. Please also see **1.3 Working Hours**.

FWAs may come in the form of flexi-load, flexi-time or flexi-place. A few examples for each category are as follows.

- Flexi-load –
 - (a) job sharing; and
 - (b) part-time work.
- Flexi-time –
 - (a) creative scheduling;
 - (b) staggered time;
 - (c) compressed work schedule; and
 - (d) flexi-hours.
- Flexi-place –
 - (a) teleworking; and
 - (b) home-working.

Platform Workers

With the advent of online platforms such as food delivery and ride-hailing apps, there has also been a rise in the number of platform workers using these platforms to provide their services.

However, the government has recognised that platform workers are in a precarious position due to their generally modest incomes and exposure to significant risk due to the amount of time spent on the road. Hence, the Advisory Committee on Platform Workers was established to look into how platform workers could be better protected.

In November 2022, the Advisory Committee on Platform Workers published 12 recommendations that sought to address the lack of protection for platform workers. The following 12 recommendations were accepted by the government.

- Platform workers should not be classified as employees.
- Platform companies that exert a significant level of management control over platform workers should be required to provide them with certain basic protections.
- Platform companies should be required to provide the same scope and level of work injury compensation as employees are entitled to under the Work Injury Compensation Act (WICA).
- The platform company for which the platform worker was working at the time of injury should be required to provide compensation, based on the platform worker's total earnings from the platform sector in which the injury was sustained.

- Sector-specific definitions of when a platform worker is considered to be “at work” should be determined.
- The strengths of the current WICA regime should be retained, including the provision of work injury compensation insurance through the existing open and competitive insurance market.
- The CPF contribution rates of platform companies and platform workers should be aligned with those of employers and employees respectively (required for platform workers who are aged below 30 in the first year of implementation).
- Older platform workers who are aged 30 and above in the first year of implementation of the aligned CPF rates should be allowed to opt in to the full CPF contribution regime.
- Platform companies should be required to collect platform workers' CPF contributions to help workers make timely contributions.
- The increased CPF contributions should be phased in over five years, unless major economic disruption warrants a longer timeline. To ease the impact, the government may wish to consider providing support for platform workers (and the form this should take).
- Platform workers should be given the right to seek formal representation through a new representation framework designed for platform workers.
- A Tripartite Workgroup on Representation for Platform Workers should be set up to co-create the new representation framework (for more details on representation of platform workers, see 6.2 **Employee Representative Bodies**).

These 12 recommendations have been incorporated into the Platform Workers Bill, which has been passed by parliament on 10 September 2024 and came into force on 1 January 2025 as the Platform Workers Act 2024.

6. Collective Relations

6.1 Unions

Trade unions are associations of workers or employers with the regulation of employer–employee relations as their main aim, for the purposes of:

- promoting good industrial relations between workers and employers;
- improving the working conditions, as well as the economic and social status, of workers; and/or
- increasing productivity for the benefit of workers, employers and Singapore's economy.

Trade unions are required to apply to the Registrar of Trade Unions to be registered. They are regulated under:

- the Trade Unions Act 1940 and Trade Unions Regulations;
- the Trade Disputes Act 1941;
- the Industrial Relations Act 1960;
- Part III of the Criminal Law (Temporary Provisions) Act 1955; and
- the Singapore Labour Foundation Act 1977.

Trade unions play a key role in representing their members in collective bargaining and negotiating with employers for collective agreements (see discussion in **6.3 Collective Bargaining Agreements**).

Although uncommon in Singapore, trade unions may take industrial action. They may do so only if they have obtained the consent of the majority of members who would be affected, through a secret ballot.

6.2 Employee Representative Bodies

Trade unions are the representative bodies for employees in Singapore.

Under the recently passed Platform Workers Act 2024, a new legal framework has been introduced for the representation of platform workers. Platform work associations (PWA) will be required to be registered in order to be formally recognised. Registered PWAs will have similar powers as unions to engage in collective bargaining on behalf of platform workers, to represent platform workers in disputes and to provide platform workers with support services.

6.3 Collective Bargaining Agreements

Collective agreements are agreements between an employer and the trade union on the employees' employment terms. They are valid for a minimum of two years and a maximum of three years.

Certain matters are statutorily excluded from the scope of collective bargaining, such as:

- the promotion of an employee;
- an internal transfer, which does not entail a detrimental change to the transferred employee's employment terms;
- the employer's hiring decisions;
- the termination of an employee's contract by reason of redundancy or the employer's reorganisation;
- the dismissal and reinstatement of an employee who considers that they have been wrongfully dismissed; and
- the assignment or allocation of duties to an employee that are consistent or compatible with the employee's employment terms.

A trade union must be accorded recognition by the employer under Section 17 (1) of the Industrial Relations Act 1960 and the Industrial Relations (Recognition of a Trade Union of Employees) Regulations before it may engage in collective bargaining.

Either the employer or the trade union may initiate the collective bargaining process through serving notice.

If a collective agreement cannot be reached within the prescribed timeframes, any party to the negotiations may make a request to the MOM for conciliation assistance. If no agreement can be reached between the parties through conciliation, the trade dispute can be referred to the Industrial Arbitration Court as a last resort.

7. Termination

7.1 Grounds for Termination

An employment contract may be terminated by agreement, including by way of notice (see **7.2 Notice Periods**), or by a fundamental breach on the part of the other party, including dismissal for cause (see **7.3 Dismissal For (Serious) Cause**).

Advisory on Managing Excess Manpower and Responsible Retrenchment

The TAFEP's Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment strongly encourages employers to take a long-term view of their manpower needs, including the need to maintain a strong Singaporean core, and preserve jobs as far as possible.

Retrenchment should be the last resort and, if all other feasible options have been exhausted, should be conducted in a responsible and sensitive manner. This includes providing a longer notice period beyond the contractual or statutory requirements, where possible.

Employers who have businesses registered in Singapore and have at least ten employees must notify the MOM if any employee is notified of their retrenchment, within five working days after such notification.

7.2 Notice Periods

Notice Period

The Employment Act provides that either party to an employment contract may, at any time, give the other party notice of their intention to terminate the employment. The length of the notice must be the same for both the employer and employee and is determined by the employment contract or, if there is no such provision, the statutory notice period will follow Section 10 (3) of the Employment Act and is up to four weeks, depending on the length of service.

The employment may also be terminated by either party without notice by paying a sum to the other party equal to the salary which would have accrued to the employee in lieu of notice.

The Tripartite Guidelines on Wrongful Dismissal provide that where the employment contract provides for termination with notice, the employer is entitled to terminate the employment with notice without providing a reason.

Formalities

The Employment Act requires that notice of termination must be in writing. Even where the Employment Act does not apply, it is usually prudent to give notice in writing.

The notice should generally contain the date of termination, or make it ascertainable by computation. In addition, where an employer is giving notice, it is generally useful to state the employer's expectations of the employee's work and conduct up to the last day of work.

Severance Payments

Generally, there is no statutory requirement for an employer to pay retrenchment benefits/severance payments. However, an entitlement to retrenchment payments/severance payments may be provided in the terms of employment contracts.

Employees who fall under Part 4 of the Employment Act will not be entitled to any retrenchment benefit if they have not been in continuous service with their employer for two years or more. Non-Part 4 employees are not statutorily entitled to any retrenchment benefit.

The quantum of severance benefits will often depend on the terms of the employment contract or, where the employee is unionised, the collective agreement.

Where there is no contractual provision for the quantum of severance benefits, the TAFEP's Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment recommends that employers pay severance benefits of between two weeks' and one month's salary per year of service, depending on the financial position of the company and taking into consideration the industry norm. The TAFEP's recommendation represents the prevailing norm for the quantum of severance benefits.

7.3 Dismissal for (Serious) Cause

An employee may be summarily dismissed for cause, without notice or salary in lieu of notice, if the employee commits a fundamental breach of the employment contract, such as where there is disobedience, negligence, incompetence or disloyalty.

An employee may also be summarily dismissed if the employment contract provides for the immediate termination of the contract on the occurrence of certain events and such an event occurs. For example, an employment contract may provide that an employer

may immediately terminate the contract if the employee is convicted of a criminal offence involving fraud or dishonesty.

Procedure Under the Employment Act

Where an employee is covered by the Employment Act, an employee can only be summarily dismissed for misconduct after a due inquiry. The requirement for there to be a due inquiry only applies if the employee is summarily dismissed for misconduct, and not for wilful breach of the employment contract or some other reason (eg, gross incompetence).

A due inquiry requires that the employee concerned be properly informed about the allegation(s) and the evidence against them so that they have an opportunity to defend themselves by presenting their position and any other evidence. Additionally, the person hearing the inquiry should be seen as impartial.

A failure to carry out a due inquiry may constitute wrongful dismissal. See **8.1 Wrongful Dismissal**.

Procedure Under Common Law

There is no general common law prescription of procedural due process or requirement for the application of natural justice.

However, where there is an employment contract, or other terms are incorporated into the employment contract that set out the procedure for inquiry into misconduct, the employer will have to comply with such procedure for dismissal on the grounds of misconduct.

7.4 Termination Agreements

It is common for employers and departing employees to enter into termination agreements, which may contain obligations in the remaining period of employment, as well as post-employment obligations. Some of the provisions in such agreements include the following:

- severance payments;
- arrangements for employee stock option plans (ESOPs) and other benefits payments;
- mutual waivers and releases;
- non-disparagement clauses; and

- post-termination restrictive covenants.

These agreements provide clarity and closure at the end of the employment relationship and minimise the risk of disputes.

Employers need to handle the presentation of termination agreements with care. For example, employers will want to avoid their employees apprehending discussion of such agreements as constructive dismissal from employment or perceiving that they are under duress or other undue pressure to enter into the agreements.

7.5 Protected Categories of Employee

The dismissal of an employee because of discrimination on the basis of that employee's age, race, gender, religion, marital status and family responsibilities, or disability is regarded as wrongful dismissal. It is also wrongful dismissal to dismiss an employee in order to deprive them of benefits/entitlements that they would otherwise have earned (eg, maternity benefits), or to punish the employee for exercising an employment right (eg, filing a mediation request, or declining a request to work overtime), according to the Tripartite Guidelines on Wrongful Dismissal.

It is also an offence under the Industrial Relations Act 1960 for employers to discriminate against members of trade unions.

8. Disputes

8.1 Wrongful Dismissal

Wrongful dismissal is the dismissal of an employee without just or sufficient cause. The termination of employment with notice but without giving any reason is presumed not to be wrongful. However, if an employer chooses to give a reason, the dismissal can be wrongful if the reason given is proven to be false. If no reason is given, an employee must substantiate a wrongful reason for the dismissal, such as discrimination, deprivation of benefit, or to punish an employee for exercising their employment right (Tripartite Guidelines on Wrongful Dismissal).

Damages for Wrongful Dismissal

The normal measure of damages in a case of wrongful dismissal is for the amount which the employee would have received under the employment contract had the employer lawfully terminated the contract by giving the required notice or paying salary in lieu of notice. However, if the wrongful dismissal claim is brought to the Employment Claims Tribunal, the successful employee may be awarded compensation for harm suffered in addition to the employee's loss of income.

Reinstatement of Employment

For employees covered under the Employment Act, an employee who considers that they have been dismissed without just cause or excuse may lodge a claim with the Employment Claims Tribunal for the reinstatement of their former employment, or compensation.

However, under common law, the reinstatement of former employment is generally not granted and the former employee will typically be compensated by damages.

8.2 Anti-Discrimination

Tripartite Guidelines on Fair Employment Practices

The Tripartite Guidelines on Fair Employment Practices (TGFEF) are issued by the Tripartite Alliance for Fair and Progressive Employment Practices (TAFEP), consisting of the MOM, the Singapore National Employers Federation and the National Trades Union Congress.

The TGFEF is mainly guided by the following five principles of fair employment practices.

- Recruit and select employees on the basis of merit (such as skills, experience or ability to perform the job), regardless of age, race, gender, religion, marital status and family responsibilities, or disability.
- Treat employees fairly and with respect and implement progressive human resource management systems.
- Provide employees with an equal opportunity to be considered for training and development based on their strengths and needs, to help them achieve their full potential.
- Reward employees fairly based on their ability, performance, contribution and experience.

- Abide by labour laws and adopt the Tripartite Guidelines on Fair Employment Practices.

Workplace Fairness Act 2025

The Workplace Fairness Act 2025 (WFA) was passed on 8 January 2025 and is expected to take effect in the next few years. The WFA seeks to strengthen efforts to ensure fair and respectful workplaces in Singapore.

The WFA will complement the TGFEF to ensure no worker is left unprotected from workplace discrimination, by:

- strengthening protections for jobseekers and employees against workplace discrimination, while retaining flexibility for employers to meet genuine business needs;
- promoting better communication and amicable resolution of workplace issues through requiring firms to have grievance handling processes; and
- complementing the MOM's education-first approach with calibrated enforcement levers to deal with egregiously unfair employment practices.

The WFA prohibits adverse employment decisions on the grounds of any protected characteristic, which includes the following:

- age;
- nationality;
- sex;
- marital status;
- pregnancy;
- caregiving responsibilities;
- race;
- religion;
- language ability;
- disability; and
- mental health condition.

For workplace discrimination based on other characteristics, the TGFEF will continue to apply and complement the WFA to ensure fairness in the workplace.

It is expected that a second Workplace Fairness Bill will be introduced in relation to the procedural rights and processes for individuals to make private claims,

which will come into effect at the same time as the WFA.

Discrimination in Dismissal and Retrenchment

The dismissal or retrenchment of an employee because of discrimination on the basis of that employee's age, race, gender, religion, marital status and family responsibilities, or disability is wrongful (Tripartite Guidelines on Wrongful Dismissal; Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment).

Employers who have wrongfully dismissed employees on discriminatory grounds may be made to compensate the employees beyond their salaries payable in lieu of notice. Furthermore, the MOM may also take action against employers found to follow discriminatory practices by curtailing work pass privileges for such employers.

8.3 Digitalisation

Court Proceedings

Most court proceedings in respect of civil disputes (including employment disputes) are now conducted via videoconferencing. Certain hearings, such as those involving the examination of witnesses, however, continue to be conducted in person. In some cases, parties may seek permission for witnesses who are situated abroad to give evidence via video conference.

Mediation

Mediation conducted by the Tripartite Alliance for Dispute Management (TADM), which is a prerequisite for a party to bring a claim to the Employment Claims Tribunal (see 9.1 Litigation), is mainly conducted online via the TADM online dispute resolution (ODR) system, or by email or phone. The process involves each party exchanging correspondence or responses via email or the ODR system, with the mediator facilitating the exchange and, where necessary, with the mediator having private discussions with the parties separately.

Mediation before a private mediation provider such as the Singapore Mediation Centre may also be conducted virtually, in-person, or in a hybrid manner, depending on the parties' agreement. Flexibility in the conduct of the mediation can make it easier for par-

ties with representatives that are located in different countries to participate in the mediation.

9. Dispute Resolution

9.1 Litigation

Employment Claims Tribunal

The Employment Claims Tribunal provides an alternative, low-cost forum for employees and employers to resolve salary-related claims or wrongful dismissal disputes. For a claim to be heard in the Employment Claims Tribunal, the following preconditions must be satisfied:

- if the claimant is an employee, the claim must either be a specified statutory or contractual salary-related dispute or a wrongful dismissal dispute;
- the claim cannot exceed the prescribed claim limit of SGD20,000 unless it involves a union (recognised under the Industrial Relations Act 1960), in which case, the limit is SGD30,000;
- a mediation request must first be lodged with the TADM, the claim must have failed to be resolved through mediation, and a claim referral must have been issued by the mediator;
- if the claimant is an employer, the claim must relate to a salary in lieu of notice of termination dispute; and
- the claimant is claiming against a party who is residing, or has a registered office or place of business, in Singapore.

However, certain employees, namely, seafarers, domestic workers and public officers are not allowed to bring claims before the Employment Claims Tribunal and employers are similarly not allowed to bring claims against such employees before the Employment Claims Tribunal.

All proceedings before the Employment Claims Tribunal are conducted in private. The parties must act in person and cannot be represented by lawyers.

Litigation

Parties may choose to bring their employment disputes before the Singapore courts. Claims not exceeding SGD60,000 are filed in the magistrate's court,

while claims not exceeding SGD250,000 are filed in the district court. Claims exceeding SGD250,000 are filed in the High Court.

There are no specific processes under Singapore law for bringing class action claims.

9.2 Alternative Dispute Resolution

Arbitration

Parties can agree to have disputes arising between them determined through arbitration. If an action is brought before a court where the parties have entered into an arbitration agreement, the court will generally stay the court proceedings.

Mediation

The TADM provides mediation services for salary-related claims, wrongful dismissal claims and appeals under the Retirement and Re-employment Act. Only disputes that cannot be resolved via mediation may then be referred to the Employment Claims Tribunal.

Parties can also agree to refer employment disputes to private mediation service providers, such as the Singapore Mediation Centre.

9.3 Costs

Costs are generally awarded to the successful party at the discretion of the court, taking into account the conduct of all the parties (including before and during the proceedings) and the parties' conduct in relation to any attempt to resolve the dispute through mediation or any other means of dispute resolution.

Trends and Developments

Contributed by:

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TSMP Law Corporation

TSMP Law Corporation is a top Singapore corporate boutique firm specialising in complex disputes and cutting-edge transactions. Its employment team handles the entire spectrum of employment and labour law issues, including contentious, transactional and advisory matters. The firm advises financial institutions, multinationals and large corporates, as well as C-suite and executive-level employees. The employment team is experienced in litigation, arbitra-

tion, tribunal proceedings and mediation. The team also advises on immigration, data protection and privacy, and industrial relations issues. Recent matters include advising Singapore insurer Singlife on equity and compensation issues arising out of Sumitomo Life's SGD4.6 billion acquisition of its shares, and both obtaining and setting-aside court and arbitral non-compete injunctions.

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Singapore Employment Law: Navigating the New Paradigm

Singapore's at-will employment regime has long been instrumental in maintaining its position as a business-friendly jurisdiction in the region and internationally. But recent legislative developments and judicial decisions have introduced an added layer of nuance to the employment and labour landscape. These demonstrate that Singapore's approach extends beyond purely economic and commercial considerations, to encompass its long-standing commitment to creating a fairer and more equitable workplace environment.

The perennial challenge of striking the appropriate balance remains though. While calls to strengthen employee protections will undoubtedly continue for the foreseeable future, Singapore has maintained an incremental and business-conscious approach to reform. This has allowed it to preserve its status as a global business hub.

For businesses, these recent changes necessitate proactive adaptation of employment practices, and heightened attention to compliance obligations. At the same time, they also present opportunities to cultivate stronger, more sustainable workforces through fair and transparent employment practices.

The upcoming Workplace Fairness Act 2025 – Singapore's first comprehensive anti-discrimination statute – will require reviews of hiring practices, performance management systems, and internal policies ahead of its expected implementation in 2026 or 2027. Enhanced parental leave provisions and recent judicial decisions on restrictive covenants and good faith obligations are also reshaping the employment landscape.

A New Era of Anti-Discrimination

The year 2025 marks a pivotal moment in Singapore's employment law regime, with the enactment of the Workplace Fairness Act 2025 (WFA). A second related bill is anticipated later this year, which is importantly expected to address employee – and job applicant – claims procedures and processes. The WFA is due to come into force by 2026 or 2027.

Scope of the WFA

Several years in the making, the WFA represents Singapore's first dedicated statute prohibiting workplace discrimination. At the heart of the WFA are 11 protected characteristics:

- age;
- nationality;
- sex;
- marital status;
- pregnancy;
- caregiving responsibilities;
- race;
- religion;
- language ability;
- disability; and
- mental health condition.

Subject to limited exceptions, the WFA prohibits discrimination based on these protected characteristics.

Several of these characteristics, while familiar, come with definitions that go beyond the ordinary meaning of the words or how they may be understood elsewhere. For instance, “pregnancy” is defined to include the intent to bear children and prior pregnancies, while “marital status” extends to include the number of times a person has married.

Certain definitions are also notably broad. One example is the definition of “disability”, which includes autism and other intellectual, physical or sensory disabilities. “Mental health condition” also covers any diagnosed mental disorder. Given these expansive formulations, disputes regarding definitional boundaries may well emerge.

Prohibitions against discrimination based on these characteristics will apply throughout the employment life cycle, encompassing hiring (including offering employment, and any step towards such an offer), the time during employment (which includes performance appraisals, promotions, and training and transfer opportunities), and disciplinary and termination decisions.

While the WFA undoubtedly represents a significant milestone for employees, the legislation's drafters

were deliberate in preserving business autonomy and flexibility. Consequently, only direct discrimination is prohibited. The Act does not extend to indirect discrimination (where ostensibly neutral policies may have the practical effect of disadvantaging those with certain protected characteristics). Similarly, the WFA also does not cover sexual orientation or gender identity as protected characteristics for now. These are issues which the Ministry of Manpower Minister has characterised as complex and multi-faceted.

The WFA does provide exceptions to the general prohibition against discrimination. Where a protected characteristic constitutes a genuine employment or occupational requirement, employers may lawfully consider it. This exception may also apply where health and safety, privacy, or other legal or regulatory considerations necessitate a particular characteristic for role performance. The potential for this exception to be abused warrants close scrutiny.

In a first for Singapore, the WFA will also effectively permit affirmative action measures in respect of three protected characteristics. Employers will be actively encouraged and authorised to give preference to older employees (likely those aged 55 and above), Singapore citizens and permanent residents, and persons with disabilities.

Enforcement Mechanisms of the WFA

The WFA confers expanded powers of investigation and enforcement on the Ministry of Manpower. It also establishes a comprehensive three-tiered penalty structure with escalating consequences based on the severity and systemic nature of violations.

Employers who contravene the WFA may face administrative penalties or civil prosecutions. Failure to remedy such contraventions may result in additional criminal sanctions, including fines and, in egregious cases, even possible imprisonment of company officers.

The WFA's mechanisms also extend beyond punitive measures to include proactive requirements. In this regard, the WFA will require employers to develop and maintain accessible internal grievance handling procedures, representing a further addition to the pres-

ently limited number of compulsory workplace policies under Singapore law.

Promoting the Family

With Singapore's birth rate continuing to decline precipitously, the enhancement of parental leave benefits in 2025 comes as little surprise.

From 1 April 2025, eligible working fathers with Singapore citizen children became entitled to a total of four weeks of government-paid paternity leave, doubling the two weeks previously available.

A new shared parental scheme has also been introduced, granting eligible parents an additional six weeks of government-paid leave to be shared between them – supplementing the existing maternity and paternity leave schemes. By April 2026, this shared parental leave benefit will increase significantly to ten weeks.

Over the past year, organisations across Singapore have also been working on implementing the Tripartite Guidelines on Flexible Work Arrangement Requests. The Guidelines, which took effect on 1 December 2024, require all employers to establish a process for properly considering and responding to employees' formal requests for flexible work arrangements.

These developments represent a clear shift towards supporting work-life balance and gender equality in caregiving responsibilities.

Good Faith and Fair Dealing in Employment

In 2022, the High Court Appellate Division's decision in *Dong Wei v Shell Eastern Trading (Pte) Ltd and Another* [2022] 1 SLR 1318 cast significant doubt on whether an implied term of mutual trust and confidence existed in employment relationships. While the decision reinforced business autonomy, it also delivered a substantial setback to employees questioning whether employers could treat them unfairly.

However, just as the notion of an implied term of mutual trust and confidence appeared to have met its demise, recent decisions have demonstrated that employers must still exercise good faith – within reasonable bounds and in specific circumstances. These developments have achieved a delicate bal-

ance between employers' and employees' competing interests.

In *BGC Partners (Singapore) Ltd and GFI Group Pte Ltd v Sumit Grover* [2024] SGHC 206 (*BGC Partners*), a former employee countersued his employers for, amongst other things, alleged unpaid bonuses under a discretionary bonus plan. Although the former employee was unsuccessful, the court observed that an employer's discretion in such situations is constrained by "concepts of honesty, good faith, and genuineness, and the need for the absence of arbitrariness, capriciousness, perversity and irrationality".

There is, however, no licence afforded to disgruntled employees who simply believe that a bonus (or the lack of one) is inadequate or unacceptable. The court emphasised that it "will not intervene in the exercise of such discretion lightly", doing so only where the exercise of the employer's discretion is "so outrageous in its defiance of reason that it can be properly categorised as perverse".

Claims Upon Claims: An Employee's Playbook?

It would be convenient for businesses if all disputes could be resolved at the Employment Claims Tribunals (ECT), where wrongful dismissal and salary-related claims are capped at SGD20,000 per claim (or SGD30,000 with union assistance). A recent first instance decision, however, suggests that even after a completed ECT claim, employees may still have scope to pursue additional claims in the Singapore courts.

In *Goh Hui En Rebecca v IG Asia Pte Ltd* [2025] SGHCR 20 (*Rebecca Goh*), a former employee was terminated for alleged "serious misconduct", prompting the employer to file a misconduct report with the Monetary Authority of Singapore.

The former employee commenced ECT proceedings seeking salary in lieu of notice. She largely succeeded – in allowing her claim, the ECT also determined that the employer had failed to substantiate the misconduct allegations.

Armed with the ECT victory and a finding that her alleged misconduct was unsubstantiated, the employee proceeded to initiate High Court proceedings,

claiming unpaid sales commissions, damages for defamation in relation to the misconduct report, and negligence regarding the filing of that report.

The former employer sought to strike out her claims, contending that she had improperly bifurcated her claims and was abusing the court's process. However, the High Court Assistant Registrar disagreed, thereby validating the former employee's two-stage strategy, for now.

Absent a contrary decision from a higher court or judge, this case may serve as a template for employees seeking to pursue claims beyond the ECT's jurisdictional limits. Businesses should therefore recognise that ECT proceedings – despite their lower monetary limits – remain a significant matter that must be properly addressed and defended.

Scrutiny Over Restrictive Covenants

A pair of decisions released in 2024 demonstrate that enforcing non-competition provisions against employees continues to be not straightforward. They serve as a stark reminder to businesses that the mere existence of such a provision does not guarantee enforceability.

In *Shopee Singapore Pte Ltd v Lim Teck Yong* [2024] SGHC 29 (*Shopee*), the former employer sought to prevent its senior executive from joining ByteDance, relying on a 12-month non-competition restriction for an injunction to prohibit the senior executive from seeking or accepting employment with any of Shopee's competitors in eight countries.

The High Court refused to enforce the restriction, citing established law that a restrictive covenant must be directed at protecting a legitimate proprietary interest. Given that interests in trade secrets and confidential information were already protected by a separate confidentiality clause, the employer needed to identify another interest that the non-competition restriction was intended to protect. Unfortunately, the former employer was unable to do so.

Reasonableness remains the other requirement for enforcing a restrictive covenant. In that case, the court was notably unconvinced by the former employer's argument that the executive's participation in regional

strategy meetings justified restricting his employment across all markets where Shopee operated.

Shortly after that decision, the High Court issued its judgment in *MoneySmart Singapore Pte Ltd v Artem Musienko* [2024] SGHC 94 (*MoneySmart*). In that case, the court declined to enforce a non-competition provision against MoneySmart's former Head of Technology, holding that there must be a close connection between the activities restrained and the work undertaken by the employee. The lack of such a close connection proved fatal.

The employer attempted to rely on the doctrine of “blue pencil” severance – under which portions of a clause could be struck out, leaving the remainder enforceable. The court held, though, that that doctrine could not allow the rewriting of a clause to one which was of a different scope altogether, as that would have changed its fundamental character.

Neither could that doctrine save the restraint period of 12 months, failing which six months, and failing which three months. The court criticised such cascading clauses (allowed in other jurisdictions) as “plainly unjust” and allowing an employer “multiple bites of the cherry”.

Additionally, the court firmly rejected the employer's attempt to selectively enforce only portions of the non-compete clause's geographic scope. In this case, MoneySmart could not take its “South-East Asia”-wide restriction and argue that it only wished to enforce this in relation to specific countries.

Above all, public policy considerations remain paramount. The court made it clear that the practice of imposing wide and general restraints that could later support severance should be discouraged.

For businesses, the decisions in *Shopee* and *MoneySmart* provide a timely reminder that restraint of trade clauses must be drafted “precisely, clearly and unequivocally with respect to the scope of the work of each employee” (as the court in *MoneySmart* observed), and must also each protect a separate legitimate proprietary interest, not one already safeguarded through other clauses.

Further Guidance to Shape Employment Norms

Businesses can also expect new advisories and guidelines from the Tripartite Alliance (jointly established by the Ministry of Manpower, the National Trades Union Congress, and the Singapore National Employers Federation). These guidelines are anticipated to shape emerging norms while complementing existing and forthcoming legislation.

Particularly anticipated are the upcoming tripartite guidelines on restraint of trade clauses in employment contracts. First announced in 2024, the guidelines are expected to establish norms and guide employers on the inclusion and drafting of restrictive covenant provisions. While not intended to drastically alter existing law, they may address specific scenarios involving manual workers, more lowly paid employees, and the treatment of restrictive covenants in termination or retrenchment situations.

Accompanying the WFA, a new tripartite advisory on providing reasonable accommodations to persons with disabilities is also anticipated. This advisory is expected to illuminate the tension between the WFA's prohibition against disability discrimination and its provision permitting employers to consider protected characteristics where they constitute genuine job requirements – and where they favour disabled workers. Given that disability discrimination comprises a sizeable portion of overseas employment litigation, this advisory warrants close attention.

Strengthening the Singaporean Core

A discussion on trends and developments in the employment space in Singapore is incomplete without an update on the parallel developments in the immigration realm. Singapore, as a city-state, draws heavily on foreign talent to power its workforce at all levels, from manual workers up to the C-suite. But the challenge lies in balancing the need to attract foreign talent with employment rates and fair treatment for local employees. To further refine this balance, Singapore has strengthened its legislative framework for the protection of Singaporean employees, namely those who are Singapore citizens or permanent residents.

Amendments to the Employment of Foreign Manpower Act 1980 will empower the Ministry of Manpower to

refuse work pass applications where employers fail to comply with the Fair Consideration Framework. This transforms the Fair Consideration Framework from a guideline into an enforceable requirement, compelling employers to genuinely and fairly consider local candidates before turning to foreign talent.

The new Workplace Fairness Act 2025 also expressly allows employers to favour Singapore citizens and permanent residents over foreign employees on work passes when it comes to making employment decisions.

These legislative changes send a clear signal to companies operating in Singapore that they must demonstrate meaningful efforts to hire and develop local talent or face tangible and potentially serious consequences in their ability to access foreign workers.

A further development worth mentioning is a statement released by the Ministry of Manpower in 2024, where it took a firm stance against the hitherto common practice of foreign companies using Employers of Record to apply for work passes. This allowed foreign companies to hire foreign work pass holders in Singapore without having a direct presence in the jurisdiction (mainly to avoid creating a taxable permanent establishment).

The Ministry of Manpower's statement did not change the law, but made it clear that such practices are prohibited under Singapore law. Foreign companies that wish to hire employees in Singapore must either set up shop in Singapore, or hire locally.

Looking Forward

Singapore stands at an inflection point in employment law. The Workplace Fairness Act is a significant step in Singapore's long-standing commitment to creating a fairer workplace. Enhanced parental leave provisions and the push towards adopting flexible work practices also signal a broader awareness of the need to address ongoing socio-economic challenges. These legislative changes, coupled with judicial developments in areas such as good faith obligations and restrictive covenants, are fundamentally reshaping the employment landscape.

These developments require businesses to strike a new equilibrium. Forward-thinking organisations will view new compliance requirements not just as inconvenient additional obligations, but as fresh opportunities to forge an enhanced workplace culture, attracting top talent while mitigating litigation risks. As Singapore continues to position itself as a premier international business hub, employment practices that reflect both legal compliance and progressive values will become increasingly central to competitive advantage.



Law and Practice

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PFP Law is a dynamic law firm with offices in Slovenia (Ljubljana) and Austria (Vienna), strategically well-positioned to offer tailored, high-quality legal services, especially in all fields of business law. They specialise in cross-border matters and are equipped with the knowledge and experience to support the clients in both complex transactions and day-to-day legal matters. PFP Law was formed through the merger of two esteemed law firms: FPJR (Fabiani, Petrovič, Jeraj, Rejc and MP Law. The firm advises domestic and foreign companies, as well as public organisa-

tions, on all matters related to employment law, data protection and social security law. They have specialised expertise in dismissal and individual termination proceedings, internal staff reorganisations, collective bargaining negotiations with trade unions, GDPR and work permits/detachments, as well as other employment law-related matters. With their experience and expertise, the firm can offer support to employers' HR and legal departments, helping to prevent conflicts and protect clients' rights. They also represent the interests of employees in employment disputes.

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PARTNERS FOR PROGRESS

1. Employment Terms

1.1 Employee Status

There is no formal distinction between blue-collar and white-collar workers in Slovenia. The Slovenian law is generally employee-friendly and determines a rather wide scope of minimal rights that need to be provided to all employed persons – ie, persons working based on an employment contract.

However, the law allows certain deviations from the mandatory provisions of the law (ie, minimum employee rights) regarding the legal representatives of employers and executive workers. A special regime also applies to so-called public employees.

Employers' Legal Representatives

The Slovenian Employment Relationships Act (*Zakon o delovnih razmerjih*, OJ no 21/13 et seq – “ZDR-1”) allows deviation from the minimum rights and obligations set forth therein for managing directors of the company and (registered) proxy holders – ie, employees who have a corporate mandate in addition to their employment contracts.

With these employees, the employer can agree on a regime deviating from ZDR-1 with regard to the following rights and obligations:

- the term of the contract (it is usually linked to the term of the mandate of such employee);
- working hours and provisions on breaks and rest periods;
- remuneration of work;
- disciplinary responsibility;
- termination of the employment contract; and
- the applicability of collective bargaining agreements for such employees.

In practice, employers prefer to reach all-in agreements with such employees, by which they agree on a fixed compensation for work provided under such an agreement (which is not possible for other employees, even executives). The flexibility regarding the termination of the employment agreement is also important, as it allows the parties to deviate from the rather strict and formalistic termination regime set forth in ZDR-1 for all other categories of workers.

Executive Employees

Certain deviations from the minimum rights outlined in ZDR-1 are also allowed for executive employees, albeit to a lesser extent than for legal representatives of the employer. Executive employees are employees who manage a business area or an organisational unit of the employer and are authorised to make independent decisions about either personnel or the organisation of work in their respective department or legal transactions. The executive employees must have such competences not just “on paper”, as the agreements on deviations from the minimum rights set forth by ZDR-1 will otherwise not be valid.

A special regime applies to the duration of such contracts, as they can be concluded for a fixed term if such executive employee is already employed with the employer for an indefinite term in a non-executive position to which the employee will be able to return after their employment agreement for an executive position terminates.

Further deviations from the minimum rights are permitted with regard to working hours, night work and rests and breaks, provided that the executive employee has certain independence regarding the organisation of their working hours or if their working hours cannot be planned in detail in advance (due to the nature of the position) and provided that health and safety at work are ensured. To a certain extent, employers can also agree with such employees that the contractual monthly salary will encompass overtime and work outside of regular working hours.

1.2 Employment Contracts

Difference Between Indefinite and Fixed-Term Employment Contracts

Employment contracts for an indefinite term are the “standard” under Slovenian law, whereas fixed-term contracts are regulated as exceptions, which can only be concluded in cases and under conditions stipulated in ZDR-1.

Written Form of Employment Contracts

The law requires an employment contract to be concluded in written form. The employer is obliged to present a written proposal to the employee at least three

days before its signing and a signed copy after it has been concluded.

The lack of a written form does not necessarily mean that no employment relationship exists. The written form is stipulated in favour of the employee. If the employee claims that an employment relationship exists between the parties, the employer will bear the burden of proof that no such relationship exists in case of dispute.

ZDR-1 sets forth the mandatory elements of an employment contract. With respect to certain rights and obligations, the employment contract can also refer to collective bargaining agreements or general regulations of the employer. The statutory content includes:

- information on the contracting parties;
- the date of commencement of work;
- the employee's position and a detailed job description;
- the place of work;
- the term of the contract and (if applicable) the reason for concluding a fixed-term employment contract;
- an indication of whether the employment contract is for full-time or part-time work;
- working hours and the distribution thereof;
- the amount of the employee's basic salary and any other payments to which the employee is entitled;
- the payment of allowances and other components of the employee's salary, the pay period, the pay-day and the method of salary payment;
- the duration of annual leave;
- the length of notice periods;
- training provided by the employer;
- reference to the binding collective agreements or the employer's general acts determining the working conditions of the employee; and
- other rights and obligations in specific cases.

Employment Contracts for an Indefinite Term

If the length of the employment contract is not clearly stated in writing, or if the fixed-term employment contract does not comply with legal requirements, it is assumed that the employment contract is for an indefinite period.

Under Slovenian law, employment agreements may only be terminated in cases and in accordance with the conditions and procedures set forth by ZDR-1 (except for employment agreements with legal representatives, as described in **1.1 Employee Status**).

Fixed-Term Employment Contracts

As mentioned above, fixed-term contracts are viewed as "unwanted exceptions" by the law, as the social security of workers is still of significant value in Slovenia. In exceptional cases, an employment contract may be concluded for a fixed term if it pertains to:

- the performance of work that, by its nature, lasts for a specified period;
- the replacement of a temporarily absent worker;
- a temporary increase in the volume of work;
- the employment of a foreigner or a stateless person;
- a managerial person, a procurator, or other executive employee;
- the performance of seasonal work;
- a worker who concludes a fixed-term employment contract for the purpose of preparing for work, training, improving for work or education;
- fixed-term employment due to work during a probationary period;
- the performance of public works or inclusion in active employment policy measures;
- work organised as a project;
- work required during the introduction of technical and technological improvements of the work process, or due to the training of workers, or the transfer of work;
- elected and appointed officials or other workers tied to the mandate of a particular body or official; or
- other cases defined by law or by a collective agreement at the industry level.

Collective bargaining agreements may grant further exceptions, particularly to smaller employers (those employing ten or fewer employees).

ZDR-1 also limits the duration of fixed-term contracts. In general, they are limited (for the same position) to the duration of the underlying reason for which such an exception was permitted, but not more than two

years. Several exceptions apply. If the fixed-term agreement was concluded or extended contrary to the law, the employee has the right to seek its conversion into an indefinite-term employment.

Special Types of Employment Agreements

ZDR-1 also regulates some other specific types of contracts, such as:

- those for the employment of agency workers;
- agreements with self-employed, economically dependent persons who are personally performing work for the contracting entity based on a civil law agreement (and receiving 80% of their annual income from the same contracting entity);
- those relating to student work and work of children above the age of 15 (work under this age limit is permitted only exceptionally); and
- special regimes that apply to posted workers.

The law states that an employment relationship is considered to exist between parties if their relationship has all the necessary elements of an employment relationship, even if neither party intends to establish such a relationship. This often applies to student work (where students work under comparable circumstances to employed workers) and civil law contracts between self-employed persons and companies, as the parties often opt for such arrangements for tax reasons.

1.3 Working Hours

Full-Time Work

Full-time working hours must not exceed 40 hours per week. Exceptions apply to employment agreements with legal representatives and executives (see **1.1 Employee Status**).

Specific laws or collective bargaining agreements can also determine shorter full working hours for individual industries or positions, but not less than 36 hours per week, except for positions with higher risks of injury or health impairments.

Distribution of Working Hours

As a rule, the working hours are evenly distributed, with the “national standard” still being five days per week and eight hours per day (including a paid break

of 30 minutes per eight hours). The parties can agree on a different distribution of working hours. In an even distribution of working hours (meaning that the regular number of working hours is the same every week), the working hours cannot be distributed to fewer than four or more than six days a week.

The law also sets forth conditions under which the working hours can be unevenly distributed or temporarily redistributed (and limitations concerning daily and weekly breaks, which need to be considered). In an uneven distribution of working hours, the weekly total must not exceed 56 hours. Employers are required to ensure that these working hours are balanced over a designated reference period, which cannot exceed six months unless extended by a collective bargaining agreement.

The employer must determine the annual schedule of working hours (annual calendar) and notify employees (and workers’ unions if they exist on the employer’s level) in writing beforehand. The parties can also agree that the specific monthly/weekly working hours will be determined by periodic calendars, determined by the employer (under all applicable agreements and limitations). Even if the working hours are distributed unevenly, this does not mean that the employer can determine the working hours/schedules ad hoc, as the employees have the right to foreseeability of working hours in order to be able to plan their private lives.

Special categories of workers (disabled workers, older employees, certain categories of parents, etc) enjoy protection, which prevents the employer from ordering them to work more than 40 hours per week (meaning that uneven distribution of their working hours is not possible if they are employed full-time) or to work overtime hours.

ZDR-1 further regulates the right of employees to propose a different allocation of working hours to balance their professional and private lives. The employer must reply to such a request in writing and justify their refusal.

Overtime Work

Overtime work is viewed as an “extreme measure” by ZDR-1, and may be requested only in cases when the

employer cannot ensure the unhindered work process with less intrusive measures (if overtime work could be avoided by better organisation of work, new employment, etc).

Extraordinary and unforeseeable circumstances under which overtime work is allowed include exceptional cases of increased workload, pending damages or danger to people and goods, avoidance of defects that could lead to work interruptions and similar situations.

If possible, overtime work shall be ordered in writing before it commences. If not, then it can be assigned orally, although a written justification of the overtime work must be provided to the employee by the end of the week following the overtime work, at the latest.

Overtime work may last a maximum of eight hours per week, 20 hours per month and 170 hours per year. The working day may last a maximum of ten hours. Daily, weekly and monthly time limits may be observed as average limits over a period specified by law or a collective bargaining agreement, and this period must not exceed six months. With the consent of the worker (given for each individual case), overtime work may exceed 170 hours, but it must not exceed 230 hours per year. When assigning overtime work, the statutory provisions on daily and weekly rest periods must be considered.

The employer cannot assign work beyond full-time working hours to specific groups of employees, such as pregnant workers, older workers (above 55 years of age), minor workers, workers in bad health whose health condition could deteriorate due to such work, workers with full-time working hours shorter than 36 hours per week due to work in a position with higher risks of injury or health impairments, or disabled workers working part-time.

Act on Records in the Field of Labour and Social Security (*Zakon o evidencah na področju dela in socialne varnosti*, OJ no 40/06 et seq – “ZEPDSV”) requires employers to maintain numerous registries regarding the employees’ working hours (including distribution of working hours and overtime work).

Part-Time Contracts

An employment contract may also be concluded for working hours shorter than full-time. Such an employee has the same contractual and other rights and obligations arising from the employment relationship as an employee who works full-time and exercises them (with some exceptions) proportionally to the time for which the employment relationship was concluded (eg, the employee is entitled to proportional annual leave of a minimum duration and holiday pay).

Specific and temporary part-time contracts are also regulated by laws determining the special rights of parents, disabled employees, etc.

1.4 Compensation

Minimum Salary Requirements

Compensation for work under the employment contract consists of a salary, which must always be in monetary form, and other types of payments (if agreed upon). In determining the salary of a worker who works full-time, the employer must adhere to the minimum salary requirements, annually determined by the Minister for Work (in 2025, the minimum salary amounts to EUR1.277,72 gross for full-time work). Collective bargaining agreements often set forth higher minimum basic salaries for individual categories of jobs.

Basic Salary, Supplements and Variable Part

A salary consists of:

- a basic salary, which is the agreed monthly compensation for the agreed number of working hours and expected results of work;
- supplements for seniority and special circumstances of work; and
- a variable part of the salary (bonus) for the individual and collective performance (if applicable at the employer).

The salary needs to be agreed upon in a gross amount.

Employees are entitled to a special seniority allowance, the amount of which is determined by collective branch bargaining agreements – most commonly, the employees receive 0.5% of their basic salary for every completed year of their work experience. Other supplements are also determined by collective bargaining

agreements and apply to special working conditions, such as overtime work, night work, work in shifts, work on Sundays and other work-free days, etc. The supplements are calculated from the basic salary.

The criteria for bonuses for individual or collective job performance are determined by collective bargaining agreements at the industry or employer level or by the employer's general acts, and are usually not a mandatory part of the employee's salary. Provided that the employer meets the conditions set forth by the Personal Income Tax Act (Zakon o dohodnini, OJ no 13/11 et seq – "ZDoh-2"), the bonus for the collective performance is not subject to personal income tax (up to a certain threshold).

Employees are entitled to a paid daily break of 30 minutes per eight hours of work (or a proportionally longer or shorter paid break if the daily working hours are longer or shorter).

Vacation Allowance

Every employee is entitled to a vacation allowance. The minimum annual vacation allowance equates to the minimum salary. The vacation allowance is not subject to any taxes or social contributions up to the amount of the last published gross average wage in Slovenia. In cases where an employee starts or ends their employment with the employer during the year, they are entitled to a pro rata part of the vacation allowance.

Work-Related Expenses

Employers are responsible for reimbursing employees for all acknowledged work-related expenses, the amount of which is usually determined by collective bargaining agreements and/or a governmental decree on thresholds up to which these payments are not subject to taxes (and social contributions). These reimbursements include the daily meal allowance, costs of commuting to and from work, travel costs and compensation for use of the employee's assets (if the employee works from home).

1.5 Other Employment Terms

Vacation

Employees in Slovenia are entitled to a certain number of paid days of vacation (annual leave). Annual leave in

a given calendar year cannot be less than four weeks, regardless of whether the employee works full-time or part-time. A longer duration of annual leave may be determined by collective bargaining agreements, general employer's acts or the employment contract. Annual leave is determined and used in working days. The employer is obliged to notify the employee in writing each year (by 31 March) of the number of vacation days to which the employee is entitled.

Annual leave may be taken in several parts, and the employer is obliged to allow the employee to use two weeks of annual leave at once. The specific dates on which the annual leave will be taken are subject to an agreement between the parties, but the employer must consider the personal circumstances of the employee (particularly if the employee has school-age children) and shall not refuse the employee's requests unless the use of annual leave on a certain date would seriously hinder the employer's work process.

The employer must enable employees to take their annual leave in the current calendar year, and employees must take at least two weeks of annual leave by the end of the current calendar year, with the remaining leave to be taken by 30 June of the following year (extensions apply in case of longer absences from work due to sick leave or parental leave).

Other Permitted Absences From Work

Paid and unpaid absences from work for personal reasons are permitted.

An employee is entitled to paid leave from work for up to seven working days in a calendar year due to personal (non-health-related) circumstances explicitly listed in ZDR-1. Absence from work due to illness or injury, as well as absence due to blood donation, is also paid. The duration of such paid absence is not limited, but only a certain part of the compensation burden falls on the employer.

The recent amendments to the law have introduced up to five working days of paid absence in a calendar year to provide care to close relatives, as listed in ZDR-1 (ie, caregiver leave). An employee who is a victim of domestic violence is entitled to five working days of paid leave in a calendar year for the purpose

of arranging protection, legal and other procedures, and addressing the consequences of domestic violence.

Confidentiality and Non-disparagement Requirements

An employee has a general obligation to refrain from any actions that materially or morally harm or could harm the business interests of the employer, given the nature of the work performed for the employer. In addition, the employee must not use for personal purposes or disclose to a third party the employer's trade secrets, which are designated as such by the employer, and which were entrusted to the employee or became known to the employee in another way. There are no specific statutory limitations for confidentiality and non-disparagement agreements in this regard.

2. Restrictive Covenants

2.1 Non-Competes

Slovenian labour law recognises statutory non-compete prohibition and contractual non-compete clauses. The first apply to the duration of the employment agreement and prohibit the employee from engaging in any activities that might be competitive to the employer's business during the employment (exceptions are subject to employer's explicit approval), while the latter apply only if they have been explicitly and validly agreed upon in the employment contract and apply to the post-employment period.

If an employee breaches a statutory prohibition against competitive activities during their employment, the employer may seek compensation for damages caused by the employee's actions. This claim must be filed within three months of the day the employer becomes aware of the violation, but it cannot be later than three years after the employment ends or the transaction is completed.

A (post-)contractual non-compete clause may be agreed upon in writing for a period not exceeding two years after the termination of the employment contract, and only for cases of termination of the employment contract by mutual agreement between the par-

ties, due to regular termination by the employee or termination for cause by the employer.

If compliance with the non-compete clause prevents the employee from earning an income comparable to their previous salary, the employer must pay the employee a monthly monetary compensation for the entire duration of the prohibition. The monetary compensation for compliance with the non-compete clause must be stipulated in the employment contract and must amount to at least one-third of the employee's average monthly salary in the last three months before the termination of the employment contract. If the monetary compensation for compliance with the non-compete clause is not stipulated in the employment contract, the non-compete clause is not valid.

The employer and the employee may mutually agree to terminate the validity of the non-compete clause. If an employee terminates their employment contract due to a serious breach by the employer, the non-compete clause will no longer be valid. To ensure this, the employee must provide written notice to the former employer within one month of terminating the employment contract, stating that the non-compete clause does not bind them.

The legal representatives of the employer may be subject to additional non-compete obligations in accordance with the provisions of Slovenian corporate law. These restrictions are separate from the non-compete obligations under employment law and are not discussed here.

2.2 Non-Solicits

Non-solicitation clauses aim to prevent employees from actively recruiting their colleagues from their (former) employers. Such contractual clauses are relatively rare in employment contracts and are usually agreed upon only with managerial workers and executives. It is questionable whether they would be enforceable in case of dispute, as Slovenian employment law allows for a rather limited number of restrictions pertaining to the post-contractual obligations of an employee.

Such clauses might also be agreed upon with an employer's business partners (customers). As they

are not regulated by Slovenian employment law and do not directly impose any obligations on the employees, such clauses cannot prevent an individual from accepting employment with a company that has agreed on such a clause with the employee's former employer. It is questionable whether the customer bound by such a clause could refuse to employ the employee if they were the most suitable candidate for an open position.

3. Data Privacy

3.1 Data Privacy Law and Employment

The General Data Protection Regulation (GDPR) applies in the employment sphere. In addition, the national Personal Data Protection Act (*Zakon o varstvu osebnih podatkov*, OJ no 163/22 – “ZVOP-2”) regulates video surveillance of official, work or business premises and within workspaces.

Operators of video surveillance systems in the public and private sectors may conduct video surveillance of access to official, work or business premises if it is necessary for the safety of people or property, to ensure control of entry into or exit from these premises, or if the nature of the work poses a potential risk to employees. Before introducing video surveillance in a public or private sector entity, the employer must consult with the representative trade unions and the works council or employee representative.

The implementation of video surveillance within workspaces may only be conducted when it is necessary for the safety of people or property, for the prevention or detection of violations in the area of gambling, or the protection of classified information or trade secrets, and when these purposes cannot be achieved by less intrusive means. It is prohibited to record workstations where an employee usually works, except when it is necessary in the circumstances mentioned above. Direct monitoring of camera footage is permitted only if it is carried out by expressly authorised personnel of the operator.

In all instances, employees must be notified in writing in advance of the implementation of video surveillance.

4. Foreign Workers

4.1 Limitations on Foreign Workers

If foreign workers want to work in Slovenia, they require a work permit and employment authorisation. Foreign workers are citizens of third countries – ie, countries that are not members of the European Union or European Economic Area. Conditions for the employment, self-employment and work of foreigners, and related tasks by the authorities for regulating and protecting the labour market, are regulated in the Employment, Self-Employment and Work of Foreigners Act (*Zakon o zaposlovanju, samozaposlovanju in delu tujcev*, OJ no 47/15 et seq – “ZZSDT”). Usual conditions relate to:

- passing a labour market test to determine if suitable candidates registered as unemployed at the Employment Service of Slovenia (hereinafter: ESS) are available;
- having a clean criminal record;
- demonstrating sufficient means of subsistence for their stay in Slovenia; and
- employer has not dismissed workers for business reasons in the past six months (from July 2025 onwards).

Foreign workers can apply for the following permits and authorisations:

a single permit (a combined residency and work permit) for employment, with subtypes including an EU Blue Card, an EU ICT permit and a single permit for seconded workers and daily migrant workers;

- work permits under the various bilateral agreements (eg, with Bosnia and Herzegovina or Serbia);
- posted worker notification from another EU member state;
- short-term work notification (a visa may be required for entry);
- short-term legal representative work notification (a visa may be required for entry);
- a business visit permit (no permit or notification is required if conditions are met, although a visa may be necessary for entry); and
- various other types of visas (eg for seasonal work in areas of tourism, hospitality, agriculture and forestry).

Based on the EU Blue Card Directive, national authorities are mandated to recognise high professional qualifications of foreigners to facilitate the mobility of highly qualified workers (before July 2025, the recognition was only optional). The conditions for both short-term (up to 90 days) and long-term (over one year) mobility of highly qualified workers have been simplified. Thus, the salary threshold for defining a highly qualified employment is being lowered (from requiring a one-year employment contract to a six-month one) and from 1.5 times the average annual gross salary to the average gross annual wage.

4.2 Registration Requirements for Foreign Workers

There are no registration requirements for employers seeking to hire foreign workers, although foreign citizens can only enter into an employment contract in Slovenia if they meet the requirements for obtaining a work or single permit. They must not begin working until the permit is issued. Any employment contract signed with a foreign citizen who does not hold a valid permit is considered null and void. Employers are allowed to hire only those foreign workers who possess valid work permits. The application for a work permit can be submitted by either the employee or the employer.

Depending on the severity of the violation, employers who are fined for an offence may be prohibited from hiring or working with foreign nationals for one to five years, and a new registry of such offenders is put in place from June 2025.

In order to speed up the process of issuing single permits for residence and work, the local jurisdiction limitations have been lifted in 2024.

From November 2025 onwards, a simplified temporary residence permit is being introduced for digital nomads, defined as third-country nationals who work remotely for an entity based outside of Slovenia and who demonstrate sufficient means of subsistence (at least twice the average monthly net salary in Slovenia). As digital nomads do not compete for work with other employees in the Slovenian labour market, they are not required to get a permit from the ESS.

5. New Work

5.1 Mobile Work

The location of work is an essential element of the employment contract. The parties can agree on remote work or a hybrid arrangement (which is customary), but this requires:

- an amendment of the employment agreement;
- notification of work at home to the Employment Inspectorate; and
- a prior assessment of the suitability of the remote workplace with regard to the health and safety at work requirements.

These formalistic requirements often prevent the parties from agreeing on more flexible forms of remote work (where the employee could, for example, freely choose their daily workplace). These and additional considerations (eg, recognition of minimum employee rights of the host country) also apply in cases where the employee would temporarily work in other jurisdiction(s).

Furthermore, in November 2024, ZDR-1 officially recognised the so-called “right to disconnect”, which obliges employers to undertake measures aimed at ensuring employees are aware of their right not to monitor emails or other telecommunications during their breaks, rests and other off-work times, which further limits the flexibility of such arrangements.

The relative complexity of such relationships often leads to employees deciding to become self-employed and to conclude a civil law agreement with their (previous) employer.

5.2 Sabbaticals

Sabbatical leave (as a longer absence from work) is not common on the market, and Slovenian laws do not explicitly regulate it.

Due to the very shallow labour market and increasing competition for high-performing workers, some employers are introducing such measures and their own systems regarding sabbatical leave. Some opt for temporary suspension of the employment (meaning that the agreement remains in force but the employer

does not pay any remuneration to the employee for the term of suspension), others pay only social contributions to the employee for such term, and some pay the employee their full salary for such term.

Agreements on mutual rights and obligations are usually regulated in individual agreements and, on occasion, also by an employer's internal regulations.

5.3 Other New Manifestations

Desk Sharing

Desk sharing, commonly found in open office environments, is gaining popularity due to the high rental costs for office spaces. In Slovenia, this practice is not specifically addressed in legislation and is often not mentioned in individual employment agreements. Instead, it is implemented as an organisational measure by employers, often in conjunction with hybrid work arrangements.

Platform Work Challenges

Platform work challenges have become a hot topic, particularly with regard to platforms providing deliveries of food and other products, as the scope of these services and workers soared during the pandemic and throughout the related restrictions.

Many of these workers are foreigners, who usually work based on civil law contracts and would generally be entitled at least to the protection granted to economically dependent self-employed persons (see **1.2 Employment Contracts**), as they commonly receive more than 80% of their income from the same entity.

Some concerns regarding the liability of the employer/contracting entity if such workers cause an accident (eg, a traffic accident) or violate the law while working were raised recently. In the case of employed workers, the damaged party/authorities can act against the employers, which is usually easier than acting against an individual employee.

Use of Artificial Intelligence

Challenges related to the use of AI are numerous, not yet well determined, and extend far beyond the legal issues discussed in this contribution.

6. Collective Relations

6.1 Unions

Role of Trade Unions

In Slovenia, trade unions are defined as organisations where workers voluntarily unite to protect and improve their social and economic position and rights in the workplace. Trade union freedom allows for the free establishment and operation of trade unions and the right to join them.

The Trade Union Representativeness Act (*Zakon o reprezentativnosti sindikatov*, OJ no 13/93 – “ZRSin”) sets the conditions for acquiring legal personality and representativeness of trade unions. A trade union acquires legal personality on the day of the issuance of a decision on the custody of its statute, with competent authorities keeping the statutes based on the area and activity.

Trade unions still have much influence in Slovenia, as they hold the right to organise strikes, serving as a powerful means to exert pressure on employers and advocate for the demands and rights of their members. The right to strike is guaranteed by the Constitution, with the possibility of legal restrictions if required by public interest, considering the type and nature of the activity.

Furthermore, trade unions in individual industries (branches), professions or companies are entitled to negotiate collective bargaining agreements with their employer counterparts. If a trade union is representative (at the industry, profession, company, or even national level), it has the authority to negotiate collective bargaining agreements that apply to all employees within that specific industry, profession, or company for which the agreement was established. If a trade union is organised in the company, the employer cannot unilaterally regulate through its internal regulations employees' rights and obligations that are the subject of collective bargaining agreements.

Unions further play a crucial role in the processes of business transfers and collective layoffs, as well as individual terminations (if they affect their members).

Representative Status of Trade Unions

Representative trade unions are those that are democratic, independent from state bodies and employers, primarily financed by membership fees, and have a certain percentage of members based on the industry, activity or profession. Trade union representativeness is divided into sectoral unions, activity unions and professional unions, where representativeness is crucial for the conclusion of collective agreements and participation in bodies that decide on the economic and social security of workers. A confederation of trade unions represents an association of unions from various sectors, activities or professions.

The status of representativeness on the level of an industry (branch) is obtained through a decision issued by the minister based on legal conditions; such a decision is published in the OJ. Since ZRSin does not provide for periodic verification of the conditions for representativeness, the employer may only challenge the trade union's authority for collective bargaining stemming from trade union representativeness in a collective labour dispute.

A trade union organised on the level of the company becomes representative once a certain percentage of employees (15%) join the trade union, provided that all other conditions for representativeness (as stated above) are met.

6.2 Employee Representative Bodies

Workers have a constitutional right to participate in the management of economic organisations and institutions, as regulated by the Constitution, where the details and conditions are specified by law. The Law on Worker Participation in Management (*Zakon o sodelovanju delavcev pri upravljanju*, OJ no 42/93 et sec – “ZSDU”) sets out the methods and conditions for workers' participation in the management of economic companies, regardless of ownership type, as well as sole proprietors with at least 50 employees, and co-operatives.

Worker participation is realised through the following means:

- the right to initiate proposals and to receive responses to those proposals;

- the right to be informed;
- the right to provide opinions and suggestions and to receive responses to them;
- the possibility or obligation of joint consultations with the employer;
- the right to co-decision; and
- the right to veto employer decisions.

Comparison to Trade Unions

Unlike trade unions, works councils are primarily designed to engage in co-management rather than in employment relations that establish rights and obligations within employment relationships. Works councils only take on the role of trade unions in employment matters under certain exceptional circumstances, as outlined by ZDR-1, particularly when no trade union exists at the employer. This generally means that works councils do not address workers' rights and obligations related to employment, such as salaries or working conditions (and they are prohibited from doing so if a trade union is active within the company). Instead, they serve as the representative voice for workers in the management and business decision-making processes of the company.

6.3 Collective Bargaining Agreements

The Law on Collective Bargaining Agreements regulates the parties involved, the content, the process of concluding a collective bargaining agreement and its form, validity and termination, as well as the peaceful resolution of collective labour disputes, and the record-keeping and publication of collective agreements. A collective agreement may only include provisions that are more favourable for workers than the statutory provisions, with some exceptions as specified in ZDR-1.

Parties to and Contents of Collective Agreements

Collective agreements are concluded between trade unions or associations of trade unions on behalf of workers and employers or employers' associations on behalf of employers. They consist of:

- an obligatory part that regulates the rights and obligations of the parties who signed the agreement, and may also address methods for the peaceful resolution of collective disputes; and

- a normative part that contains provisions regulating the rights and obligations of workers and employers in employment contracts, during the employment relationship, and in relation to the termination of employment contracts, payment for work, other personal earnings and reimbursements related to work, health and safety at work, and other rights and obligations arising from relationships between employers and workers, as well as ensuring conditions for trade union activities at the employer.

Types of Collective Agreements

There are several types of collective agreements, such as sectoral agreements (eg, the Collective Agreement for Non-Economic Activities), industry agreements (eg, the Collective Agreement for the Healthcare and Social Care Activities of Slovenia) and professional agreements (eg, the Collective Agreement for Doctors and Dentists in the Republic of Slovenia).

A collective agreement applies to the parties to the collective agreement and their members. If the signatories to the collective agreement include associations of trade unions or employers' associations, the collective agreement specifies which members of the association it applies to. A collective agreement binds the parties to the agreement and their members, even if a signatory withdraws from the association, but for no longer than one year.

General and Extended Validity of Collective Agreements

When one or more representative trade unions conclude a collective agreement, it is granted general validity, meaning it applies to all workers at the employer or employers covered by the agreement.

When a collective agreement is concluded by one or more representative trade unions and one or more representative employers' associations whose members employ more than half of all workers employed by the employers for whom the extension is proposed, it is granted extended validity by the Minister of Labour, meaning that the validity of the entire collective agreement or part of it is extended to all employers in the activity or activities covered by the agreement.

After the termination of a collective agreement's validity, the provisions of the normative part (see above) continue to apply until a new agreement is concluded, but for no longer than one year, unless the parties agree otherwise.

Collective labour disputes are resolved peacefully through negotiations, mediation and arbitration, and before the competent labour court.

7. Termination

7.1 Grounds for Termination

When an employer terminates an employment contract, they must provide justification for the termination at that time. The reasons an employer can use to terminate an employment agreement are limited, and the procedures for termination must follow strict formal requirements.

Conversely, a worker may terminate the employment contract without providing any justification in the case of an ordinary termination. In contrast, a justification is required in cases when the employee terminates the employment agreement for cause and without a notice period (extraordinary termination).

Termination by the Employer – Permitted Termination Grounds

An employer can terminate an employment contract only based on one of the following grounds specified by ZDR-1 (numerus clausus principle):

- business reasons;
- the employee's incompetence/inability to perform the contractually agreed work;
- a material breach of obligations in the employment relationship;
- an unsuccessful probation period; or
- the inability to perform work as stipulated in the employment contract due to disability.

Under certain conditions, an employee's material breach of contractual obligations can even represent a ground for extraordinary termination by the employer – ie, a termination without any notice period. Extraordinary termination is possible in cases where

the violations are so severe that the employer cannot reasonably be expected to continue the employment relationship until the end of the notice period. The severity of a violation is a legal standard that must be evaluated on a case-by-case basis. Extraordinary terminations typically occur in situations involving criminal offences against the employer, intentional breaches of critical obligations that could lead to significant material damage to the employer, violations of sick leave policies, or failure to report to work for several consecutive days without a valid excuse.

Certain categories of workers enjoy special protection against ordinary termination, which needs to be considered in the termination proceeding (certain parents, disabled persons, older employees, trade union representatives, employees on sick leave, etc).

Termination Procedure

The procedures for termination vary depending on the grounds for termination. ZDR-1 regulates the mandatory elements of the termination letter, as well as the manner in which it must be served. It needs to be emphasised that the employer's termination always needs to contain a justification therefor. The termination needs to be as detailed as possible (particularly with regard to the relevant facts), as the court assessment of the termination – in case the employee decides to file a lawsuit challenging the termination – is always limited only to the termination reasons stated in the termination, meaning that the employer is later prevented from justifying the termination with any reasons that were not stated in the termination.

Collective bargaining agreements or even an employer's internal regulations often regulate individual types of termination procedures in more detail.

Termination for business reasons

For termination based on business reasons, the employer needs to prepare a written termination containing justified reasons for termination and serve it to the employee in accordance with the law. The business reasons must be such that the employer will be able to prove their existence in case of a legal dispute. Although the courts are not allowed to assess the business decisions of the employer (and thus assess whether a decision leading to termination is

economically sound, necessary, prudent, etc), in case of dispute the employer will still need to prove that the reasons for termination actually existed and explain why the work of the terminated employee has become redundant.

Employees are entitled to the mandatory notice periods (or longer if contractually agreed) and to a statutory severance pay, which depends on the length of the employee's employment with the employer and their average salary prior to the termination.

Termination for incompetence

For termination due to an employee's incompetence, the employer needs to monitor the employee's work for a certain period and, based on this, prepare a written justification of the termination summarising their findings. "Employee's incompetence" means that the employee is not able to provide the contractually agreed performance because they are not performing their work with the expected level of quality, professionalism or on time, or no longer meet the statutory job requirements. The termination reasons cannot be based on an employee's health issues, and termination for incompetence does not come into question when the employee's non-performance is based on the employee's violation of obligations in the employment relationship.

As in the case of termination due to the employee's fault (ie, breach of obligations in the employment relationship (see below for more)), the employee needs to be invited to a hearing (at least three business days before the scheduled hearing) in which they are allowed to present their statement with regard to the termination reasons and also the evidence in their favour. After the hearing, the employer decides whether the termination will be issued. If the employer proceeds with the termination, the termination must also contain the employer's position on the main arguments provided by the employee during the hearing or in the employee's written statement. The termination cannot be issued later than six months after the employer became aware of the employee's incompetence.

In the case of termination due to incompetence, the employee generally has the right to the same notice

period and severance pay as in the case of termination for business reasons.

Termination because of employee's fault

For termination due to the employee's fault (material breach of contractual obligations), the employer must first issue a written warning within 60 days of discovering the violation, and no later than six months after the violation occurred, informing the employee that their employment contract can be terminated if they conduct similar or other material violations of the employment agreement within six months after receiving the warning letter. This period can be extended to up to 18 months by collective bargaining agreements for the respective sector.

The written warning needs to be justified (in the same way as the termination). After receiving the written warning, the employee can request the employer to allow them to present their arguments in a hearing, and the employer must schedule a hearing within 30 days from receiving such a request (but not sooner than three working days afterwards). Based on such a hearing, the employer adopts a final decision on the warning letter.

An issued (and justified) warning letter is a precondition for a later ordinary termination of the employee's employment agreement due to the employee's fault. Conversely, the later material violation must be committed within a "probation period" stated in the warning letter. For the termination, the employer must issue a separate written accusation and invite the employee to a hearing where the employee can present arguments and evidence in their favour. After the hearing, the employer decides whether to proceed with issuing the termination notice. The same 60-day/six-month deadline applies as for the warning letter.

Extraordinary dismissal

In the case of extraordinary dismissal due to fault reasons (described in more detail in **7.3 Dismissal for (Serious) Cause**), no previous warning letter is required. This termination ground is reserved for the most material violations only. In such cases, the employer must act very quickly, as the termination must be issued within 30 days after the competent representatives of the employer learn of the termina-

tion reasons and not later than six months after the respective violations occurred. Also in this proceeding, the employee has a right to a hearing (based on previous confrontation with the accusations against them), except where the nature of the violations is such that the employer cannot reasonably be expected to grant the employee a hearing (in cases of personal assaults, longer absences from work without cause, etc).

In the case of termination due to the employee's fault, the employee is not entitled to severance pay. A 15-day notice period applies in the case of ordinary termination for fault reasons.

Termination for ordinary reasons

In the case of an employee's termination for ordinary reasons (without cause), no special formal requirements apply. The termination needs to be in writing and served to the employer. The notice period cannot be longer than 60 days, except in the termination of an employer's legal representatives, for which different notice periods can be agreed upon.

Employment contract

In the employment contract, the worker and the employer may agree on a probationary period of six months at most, during which time the worker may terminate the employment contract with seven days' notice. If the employer determines during or at the end of the probationary period that the worker has not successfully completed the probation, the employer may terminate the employment contract with seven days' notice.

Termination by Operation of Law

The employment contract terminates by operation of law in the following two circumstances:

- on the date the worker is served with a decision confirming a Category I disability or the decision granting the right to a disability pension becomes final; or
- on the date of expiration of the single permit or the seasonal work permit, if a foreigner or a stateless person concludes the employment contract.

Mass Dismissals

Special rules apply to mass layoffs (ie, situations when an employer plans to dismiss a certain number of employees within a 30-day period) when they affect:

- at least ten employees if the company has between 21 and 99 employees;
- at least 10% of employees if the company has between 100 and 299 employees; or
- at least 30 employees if the company has 300 or more employees.

In such situations, the employer must inform and consult with a recognised trade union and a works council, if they exist within the company. The subject of these consultations is mostly the criteria by which the employer will determine (individual) redundant employees and measures for preventing the loss of employment and those easing the loss of employment (and other elements of the redundancy programme).

While the employer is obliged to discuss the redundancy programme with the above-mentioned employee representatives, it is not obliged to reach an agreement with them on this matter. However, an agreement is still recommendable, as the employer otherwise faces the risk of the employee representatives doing everything in their power to delay or even prevent the mass dismissal. After the consultations with the employee representatives (if applicable), the employer must also submit information on the redundancy programme to the ESS, which is also entitled to provide its own suggestions to the employer with regard to the measures proposed in the redundancy plan, which the employer must consider as far as possible.

If there is no trade union or works council in the company, the redundancy program must be presented to all employees in a meeting. The employer can issue dismissal notices to affected employees 30 days after notifying the ESS in writing about the redundancy plan. The ESS has the authority to extend this 30-day period to 60 days. If the period is extended, the employer may only terminate the employment contracts 60 days after providing the required notification to the ESS as mentioned above.

7.2 Notice Periods

ZDR-1 determines the statutory notice periods that apply to various types of ordinary terminations. No notice periods apply for extraordinary terminations. The law sets forth minimum notice periods in favour of the employee, which can be extended either by collective bargaining agreements or by individual employment agreements.

The shortest notice periods apply to terminations during the probationary period, where either side can terminate the agreement with seven days' notice.

If the employee terminates the employment agreement outside of the probationary period, the notice period cannot exceed 60 days (unless a longer notice period is agreed upon with a legal representative of the employer). If the parties agree upon no notice period, then the 15-day notice period applies if the employee has been employed for less than a year, and a 30-day notice period applies when the employee has been employed for more than a year with the employer.

When the employer terminates the contract for business reasons or due to employee incompetence, the notice period is 15 days for up to one year of service and 30 days for service exceeding one year. After two years of employment, the 30-day notice period increases by two days for each completed additional year of service, up to a maximum of 60 days. After 25 years of service, the notice period is 80 days, unless otherwise specified by a branch collective agreement, but it cannot be less than 60 days.

In cases of termination by the employer due to the employee's fault, the notice period is 15 days.

Severance Payment

Employees are entitled to a statutory severance payment in the following cases:

- employer's termination due to business reasons or incompetence;
- extraordinary termination by the employee (due to the employer's fault); and
- lapse of a fixed-term agreement (with certain exceptions).

If the employee terminates the contract extraordinarily due to reasons attributable to the employer, the employee is entitled to a severance payment in the same amount as if the employee were terminated for business reasons. The employee is also entitled to compensation for the lost income during the notice period, as they would be in the event of termination for business reasons.

The severance pay is calculated based on the average monthly salary the employee received or would have received during the last three months prior to termination. The employee is entitled to severance pay calculated as follows:

- one-fifth of the above-mentioned basis for each year of completed employment if employed for more than one year and up to ten years with the respective employer;
- one quarter of the basis for each year of employment if employed for ten to 20 years; and
- one-third of the basis for each year of employment if employed for more than 20 years.

The statutory severance payment is capped at ten times the amount of the above-mentioned basis for the severance payment, unless a higher cap is determined in the collective bargaining agreement, employer's regulations or the employment agreement.

The statutory amount of the severance payment is not subject to income tax and social contributions, up to the amount of ten times the average gross monthly salary in Slovenia. Any amounts exceeding this threshold or severance payments that go beyond the statutory rights are subject to income tax and social contributions.

7.3 Dismissal for (Serious) Cause

See 7.1 Grounds for Termination and 7.2 Notice Periods.

Upon initiation of the extraordinary termination process, the employer may prevent the employee from performing work (suspension). During the suspension period, the employee is entitled to compensation of 50% of the employee's average salary for the previous three months.

An employee terminated due to said employee's fault is not entitled to severance pay, and their employment relationship ends the day after the termination notice is served, without any notice period. In the case of extraordinary termination due to an employee's continuous absence from work, lasting at least five working days, and if the employee has not notified the employer of the reasons for their absence, the employment relationship is terminated on the first day of such absence.

7.4 Termination Agreements

Each employment contract can be terminated by mutual agreement. Such an agreement must be in writing and must contain provisions informing the employee that they will not be able to exercise any social rights from unemployment, as the employee will become unemployed willingly. While failure to provide this notice does not invalidate the termination agreement itself, the employer may face fines for this omission.

The parties can agree on a voluntary severance payment and the conditions under which it will be paid, but such a severance payment is subject to the same income tax and social contributions as the employee's regular salary.

In practice, mutual termination agreements are preferred by employers as they reduce the risk of the termination of the employment being challenged in court. Such termination agreements are challenged (within one year from signing) only if either party signed it based on a misunderstanding, fraud or coercion, or in similar circumstances that would make the agreement challengeable under the general provisions of civil law.

Employees usually consent to such mutual termination agreements if the termination package is more favourable than what they are entitled to under statutory provisions or in cases where they would otherwise face a termination for fault reasons.

7.5 Protected Categories of Employee

ZDR-1 regulates several categories of employees who enjoy protection against individual (but not all) termination grounds, based on their personal circumstances. The existence of such special circumstances

needs to be checked by the employer prior to initiating a termination procedure. If the employee enjoys protection based on more than one circumstance, the most favourable protection regime for the employee applies.

Pregnant Workers and Parents on Leave

Pregnant workers, breastfeeding mothers of children not older than one year and parents on full-time parental leave are protected from termination during these periods, and for one month afterwards. The law also prohibits employers from initiating any (even preparatory) steps against such employees during this period of protection, providing job security for expecting and new parents. Exceptions are termination due to extraordinary reasons by the employer and termination due to the winding-up of the employer, provided that the employer previously obtains the consent of the Employment Inspectorate for such termination.

Disabled Workers

Disabled workers also enjoy broad protection against termination. Their agreements can only be terminated in accordance with specific laws regulating the rights of disabled persons, except in cases of termination due to the employee's fault or due to the winding-up of the employer. The regular termination proceedings are rather lengthy and complex, and are subject to additional approvals by the competent authorities.

Employee Representatives

The law provides specific protections against termination for certain categories of employee representatives, including worker delegates, employee representatives in the supervisory board of the employer, and appointed or elected trade union representatives. Their employment contracts cannot be terminated without the consent of the works council, the employees who elected them or the trade union, except in cases of terminations due to the employee's fault or due to the winding-up of the employer. This protection remains in place throughout their term of office and extends for an additional year after their term ends.

Organisations that have elected such employees also have relatively broad participation rights in such termination proceedings (and can oppose the termination),

and can even request the suspension of termination for a certain period, etc.

Workers Approaching Retirement

For employees close to retirement (not the same category as older workers), the employer is prohibited from terminating the contract for business reasons once the employee reaches the age of 58 or has a limited time left (less than five years) to qualify for a pension without any deductions. However, this protection does not apply in certain cases, such as when compensation is provided through unemployment insurance for the remaining period or if suitable new employment is offered or if the employee provides their written consent to the termination.

8. Disputes

8.1 Wrongful Dismissal

Employees can contest wrongful terminations on the basis of procedural errors or because the termination was unjustified or unfounded. Terminations and any other situations where the employment agreement has ceased contrary to the law (eg, expiration of an illegally concluded fixed-term employment agreement, termination of a concealed employment relationship) may be subject to challenge.

Wrongful terminations can be challenged within 30 days after the employee receives such termination or since the employment ended based on any other illegal grounds.

Not every violation of termination proceedings results in the unlawfulness of such termination; the courts assess whether or not the procedural violation actually affected the outcome of the termination.

If the employee's lawsuit is successful, the court may rule that the employment relationship never actually ended due to the unlawful termination. In such cases, the court can award the employee all rights from the employment relationship for the period since the unlawful end of the employment relationship until the finality of the decision, which can be a significant financial burden for the employer. The court can also order the employer to reinstate the employee.

If the court determines, at the request of either party, that continuing the employment is impossible even though the dismissal is deemed unlawful, it may establish the duration of employment up to the date of the first-instance judgment. The court can also acknowledge the length of service and award reasonable compensation. The compensation cannot exceed 18 months' salary based on the last three salaries of the employee. The compensation awarded depends on the length of employment, the employee's prospects for future employment and the circumstances surrounding the termination. This compensation covers the rights the employee asserted up until the contract's termination.

The income the employee received after the termination reduces the potential obligations of the employer, as described above. Potentially, a wrongful termination can also result in contractual penalties, liability for minor offences or even criminal liability of the employer.

8.2 Anti-Discrimination

Based on the constitutional principle of equality before the law, any personal circumstance of a worker or a work candidate can be the ground for an anti-discrimination claim, and the Constitution and ZDR-1 explicitly list some of them.

Employers must ensure equal treatment and avoid any form of bias or prejudice in their employment practices. Direct and indirect discrimination based on any personal circumstance is prohibited.

In case of dispute, the burden of proof lies with the employer. Therefore, if in a dispute a candidate or employee presents facts that justify the presumption of a violation of the prohibition of discrimination, the employer must prove that the principle of equal treatment or the prohibition of discrimination was not violated.

If discrimination is proven, the following remedies are available:

- invalidating the termination and reinstating the employee if the dismissal was discriminatory;

- compensation that is effective, proportionate and dissuasive; or
- monetary compensation ranging from EUR500 to EUR5,000 under the Protection Against Discrimination Act.

8.3 Digitalisation

Under the provisions of the Civil Procedure Act, which applies to labour and social disputes, there have been advancements in the digitalisation of employment disputes, including the option to conduct court proceedings via videoconferencing. Parties can participate in hearings and carry out procedural actions remotely through audio and visual transmission (videoconferencing) if they mutually agree. This flexibility allows parties and their legal representatives to be in different locations while still actively participating in the proceedings. Nevertheless, in practice, these options are not used as much as desired, as videoconferencing requires the consent of all parties involved.

Courts may also utilise digital tools for gathering evidence, such as conducting onsite inspections, reviewing documents, hearing testimony from parties and witnesses, and consulting with court experts. There has long been an expectation that e-court files will be implemented in labour disputes, but these projects have not yet been introduced.

9. Dispute Resolution

9.1 Litigation

Specialised Courts

In Slovenia, four specialised labour and social courts serve as the first instance courts for resolving individual and collective labour disputes. The Ljubljana Higher Labour and Social Court serves as the second instance court, handling appeals against decisions made by the first instance courts. In labour disputes, the first instance court panel consists of a professional presiding judge and two lay judges (one representing workers and the other employers).

Class Actions

According to the Collective Actions Act (*Zakon o kolektivnih tožbah*, OJ no 55/17 et seq – “ZKoIT”), a collective lawsuit with class action claims can be filed

together by several workers filing independent lawsuits in individual labour disputes.

Court Representation

In proceedings before the courts of first and second instance, only attorneys or individuals who have passed the state bar exam may act as authorised representatives. In cases involving extraordinary legal remedies before the Supreme Court, a party may also be represented by a trade union representative, an association of insured persons or an employer's representative, provided that the organisation employs the representative to represent its members and has passed the state bar exam.

9.2 Alternative Dispute Resolution

In Slovenia, mediation is a common method for resolving individual disputes between workers and employers, and is actively encouraged by the courts. In individual disputes, the parties can voluntarily enter into a mediation process at the start of the court procedure, and have a maximum of three months to reach an amicable solution before the judicial procedure continues.

Arbitration is less popular due to its expense, so it is mostly used in collective disputes and conflicts between employers and works councils. The procedure is regulated by ZKoIT, with two possible types of disputes:

- an interest dispute, when a collective labour dispute arises from differing interests of the parties regarding the conclusion, supplementation or amendment of a collective agreement; or
- a rights dispute, when the parties disagree on the interpretation or implementation of the provisions of an existing collective agreement, or when one of the parties claims a violation of the agreement.

A list of conciliation experts for individual cases is established by the Minister for Labour, based on recommendations from unions and employer associations.

9.3 Costs

A special rule applies to legal costs in labour and social disputes. The courts usually require the employer to cover all costs associated with presenting evidence, even if the employee does not entirely prevail in the litigation and has not incurred any special costs as a result.

Trends and Developments

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PFP Law is a dynamic law firm with offices in Slovenia (Ljubljana) and Austria (Vienna), strategically well-positioned to offer tailored, high-quality legal services, especially in all fields of business law. They specialise in cross-border matters and are equipped with the knowledge and experience to support the clients in both complex transactions and day-to-day legal matters. PFP Law was formed through the merger of two esteemed law firms: FPJR (Fabiani, Petrovič, Jeraj, Rejc) and MP Law. The firm advises domestic and foreign companies, as well as public organisations,

on all matters related to employment law, data protection and social security law. They have specialised expertise in dismissal and individual termination proceedings, internal staff reorganisations, collective bargaining negotiations with trade unions, GDPR and work permits/detachments, as well as other employment law-related matters. With their experience and expertise, the firm can offer support to employers' HR and legal departments, helping to prevent conflicts and protect clients' rights. They also represent the interests of employees in employment disputes.

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Employment in Slovenia: An Introduction

In the field of labour law, the year 2025 is marked by numerous legislative changes, strategic adjustments, and strengthened supervisory mechanisms, reflecting the state's response to the evolving conditions in the labour market. At the forefront remain systemic efforts to increase flexibility in the regulation of employment relationships, improve the legal status of foreign workers and ease the administrative proceedings for their employment, enhance oversight of compliance with labour legislation, and further modernise labour law records.

Employment and unemployment rates

In 2024, the unemployment rate in the Republic of Slovenia stood at approximately 3.7%, representing one of the lowest levels in the past decade. The total number of employed persons increased by as many as 9,000 individuals, with nearly one million people actively engaged in the labour market, of which almost 150,000 are foreign citizens. According to the Statistical Office of the Republic of Slovenia, employment particularly increased among individuals aged between 55 and 64, indicating the successful implementation of policies aimed at extending working activity and encouraging the inclusion of older persons in the labour market.

The current unemployment rate is undoubtedly the result of prolonged recovery and structural adjustments in the Slovenian labour market, most notably digitalisation and the increased participation of women and older individuals in the workforce, but also negative demographic trends. In addition to favourable economic conditions, high employment levels are also supported by flexible forms of work and strong demand for labour in healthcare, information technology, and logistics.

In 2025, more than 90% of employees continue to work full-time, reflecting a relatively conservative structure of employment forms in Slovenia. A significant gender gap also remains among self-employed individuals, with men still representing the majority in this category.

Working Time Records

The amendments to the Act on Records in the Field of Labour and Social Security, which entered into force in November 2023, caused significant discontent in practice, particularly from employers and the professional public. They pointed out that certain requirements were excessively bureaucratic, administratively burdensome, and, in some sectors, even incompatible with the actual needs and capabilities of work processes. At the same time, such measures failed to effectively achieve their fundamental goal – improving compliance with workers' rights.

In response to the above criticisms, the legislator undertook further amendments, and as of 23 April 2025, certain simplifications have been introduced. The key novelty is the elimination of the obligation to record the use of breaks during working hours, which in some sectors was considered practically impossible. In addition, employers are no longer required to record special forms of work – such as night work, shift work, or work on public holidays – on a daily or weekly basis; monthly recording of this data is now sufficient.

These changes represent administrative relief for employers and aim at creating more proportionate legislation that still protects workers' rights while enabling greater flexibility in business operations. Despite the abolition of certain obligations, voluntarily recording the use of breaks during working hours is still advisable, as such records constitute important documentary evidence by which an employer can demonstrate compliance with labour law obligations.

Migration Policy

The Slovenian labour market is facing a notably high demand for labour, particularly in certain occupations and sectors where there is a traditional shortage of workers (eg, HoReCa, construction, and social care). Due to lengthy approval procedures for applications for single residence and work permits, which, in more burdened administrative units (eg, Ljubljana and Maribor), lasted several months, the employment of foreign workers was often hindered or even rendered impossible. Legislative changes were also driven by the state's obligation to align migration policy with European directives.

Amendments were made to the Foreigners Act and the Employment, Self-Employment and Work of Foreigners Acts, which removed some administrative obstacles to the employment of foreigners in Slovenia. To accelerate the employment process for foreigners, employment in specific professions – as defined by a decree issued by the Minister responsible for labour – is now permitted even before a final single residence and work permit is granted, based on a certificate of submission of the application for a single residence and work permit and the consent of the Employment Service of Slovenia. Recently, the territorial jurisdiction of administrative units for handling these applications has also been abolished, contributing further to a more balanced workload among administrative authorities and shorter processing times.

In addition to the aforementioned simplifications, the amended laws also introduce new obligations for employers. One of the key novelties is the introduction of a mandatory Slovenian language course of at least 80 hours, which must be organised during working hours, free of charge for the worker, and provided within the first six months after the foreign worker begins employment. This measure aims to facilitate the integration of foreigners into the Slovenian environment. Relatively high fines apply in cases of non-compliance, further underscoring the importance of this measure.

According to *Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, and repealing Council Directive 2009/50/EC*, which outlines the conditions for the entry and residence of third-country nationals seeking highly qualified employment, the regulations for obtaining an EU Blue Card have been updated. A fixed-term employment contract of six months is now sufficient, and the salary threshold has been reduced to the average yearly gross wage. A specific exception also applies to the information and communication technology sector, where a foreign national may obtain a Blue Card even without formal education, provided they demonstrate appropriate practical skills and experience.

To prevent potential abuses, the amended acts contain additional safeguards. One key condition for the Employment Service of Slovenia to issue consent for an EU Blue Card is that the employer must not have terminated the employment agreement of a worker or workers who meet the requirements for the specific position due to business reasons in the past six months. However, consent may still be granted if the employer demonstrates that the foreign highly qualified worker will be paid at least the average gross monthly salary or that no suitable candidate is registered for the position in the unemployment records.

Changes have also been introduced in the field of seasonal work, which is now permitted in the hospitality and tourism sectors, though limited to six months.

As an additional mechanism for protecting the rights of foreign workers, a public list of employer violators has also been introduced. This list, published by the Employment Service of Slovenia, serves both a preventive and informative function, allowing foreign workers to gain transparency regarding past (and potentially future) violators, while also acting as a deterrent to employers.

Digital nomads

In an effort to strengthen technological and economic development, attract highly mobile foreign professionals, and boost local consumption, Slovenia has followed the example of several European countries by introducing legislative changes aimed at regulating the status of so-called digital nomads.

With the amendment to the Foreigners Act, the category of digital nomads has been defined in legislation for the first time. A digital nomad is a person who:

- is not a citizen of the European Union or the European Economic Area,
- performs remote work using telecommunications technology,
- is employed by a foreign business entity, works for a foreign business entity under a civil law contract, or is self-employed abroad, and
- does not sell or provide services or generate income in Slovenia, with the same condition applying to their employer.

The law provides the possibility of issuing a temporary residence permit to digital nomads for a period of up to one year, with no option for extension. This limitation reflects the nature of digital nomads' activity, as they typically stay in a given country only for a short period and therefore do not require longer-term permits.

Applications for residence permits may be submitted from 21 November 2025 onwards.

Permanent Short-Time Work Scheme

As of 12 July 2025, the Act on Partial Reimbursement of Wage Compensation for Short-Time Work has entered into force, introducing a so-called permanent short-time work scheme as a long-term measure to support companies during times of economic crisis. This system marks a significant shift away from the previous ad hoc approach to crisis management, which characterised the response during the 2009-2012 economic recession and the Covid-19 pandemic. The legislation was also prompted by the anticipated crisis in the automotive sector (as the Slovenian automotive sector is heavily linked to the German automotive sector).

The new regulation allows employers who, for business-related reasons, are unable to provide at least 90% of working hours to at least 30% of their employees to reduce working hours for those employees by 5-20 hours per week. At the same time, they may claim a subsidy of up to 60% of the gross wage compensation for the unworked hours. The amount of the reimbursement must not exceed 50% of the last published average gross salary in Slovenia.

The aid is granted solely in respect of employees engaged on a full-time basis. Eligible employers must not be subject to bankruptcy or liquidation proceedings and must have no outstanding tax obligations. The subsidy is also provided in cases of natural or other disasters, or other critical conditions, activated through protection and rescue plans, as well as in cases of temporary situations identified by the government in specific sectors where circumstances have arisen that employers could not have reasonably influenced or prevented, and which have caused a temporary negative impact on the scope of their

business operations, resulting in their temporary inability to provide sufficient work for their employees. In addition to financial support, the legislation also incorporates elements of active employment policy by requiring employees on reduced hours to participate in additional training and education.

It is important to note that any employer receiving the described subsidy is prohibited from paying out profits, bonuses, or other forms of profit participation within one year of receiving a favourable decision. Failure to comply will result in an obligation to return the full amount of the subsidy to the state. If such payouts occur in the second or third year, the law provides for a partial reimbursement of up to 50% of the received aid.

Older Workers

Like many European countries, Slovenia is facing a pronounced ageing of the population, which places increasing pressure on the pension system, the labour market, and the entire social welfare system. In light of these challenges and in anticipation of an amendment to the Pension and Disability Insurance Act, which foresees a gradual increase in the retirement age, it has become necessary to introduce measures to support longer labour market participation of older individuals.

In response, an amendment to the Labour Market Regulation Act was adopted, aligning with ILO Convention No. 162 on the promotion of employment for older workers and also amending the Employment Relationships Act. With this step, the legislator acknowledges that traditional forms of full-time work no longer (fully) correspond to the functional capacities of older workers and introduces the possibility of more flexible working arrangements.

Under the new regulation, an employee who is at least 60 years old and has completed 35 years of pensionable service may propose to their employer a reduction of working time to 80% of full-time hours. In such cases, the employee retains 90% of the salary they would receive for full-time work and 100% of social security contributions. It is important to emphasise that this arrangement is not an entitlement; rather, it allows the employee to propose an adjustment. However, for it

to be implemented, the employer must consent, and an annex to the existing employment contract must be signed.

The law introduces a transitional period to allow for the gradual implementation of the eligibility conditions:

- in 2026 and 2027, the measure will apply to employees turning 58 that year,
- the age threshold will then increase by three months each year,
- until 2035, when the measure will apply to employees aged 60 and above.

This gradual increase in the eligibility age corresponds with the transitional period planned for raising the retirement age under the proposed amendment to the Pension and Disability Insurance Act.

It is important to note that at the time of writing this summary, the act has not yet been published in the Official Gazette of the Republic of Slovenia and, therefore, has not entered into force. The Slovenian Migrant Workers' Union has submitted an initiative to collect voters' signatures for calling a legislative referendum. The final day for collecting signatures is set for 5 October 2025, meaning the measure's final implementation is not yet fully guaranteed.

Labour Inspectorate of the Republic of Slovenia's Priority Response Unit – Strengthened Response to Systemic Violations of Labour Legislation

To ensure faster and more effective responses to the most serious violations of labour legislation and occupational safety and health regulations, the Labour Inspectorate of the Republic of Slovenia established a Priority Response Unit on 1 October 2024. This new organisational unit is specialised in targeted, coordinated, and rapid interventions by the supervisory authority in the field of labour law.

The establishment of the unit is a response to the growing number of complex, large-scale, and recurring violations – particularly in cases where vulnerable workers or a larger group of employees are affected. It is activated in situations where there is a demonstrated public interest in immediate action, such as systemic abuses, severe breaches of occupational

safety and health, or repeated irregularities in employment relationships.

The unit consists of nine experienced inspectors, six of whom specialise in employment relationships and three in occupational safety and health. This structure enables an integrated approach that goes beyond the traditional separation of inspectors, contributing to a more comprehensive protection of workers' rights.

At the core of the unit's work is the proactive monitoring of the labour market and working environment, including risk analysis, handling of complaints, and targeted detection of violations with broader social impact.

According to the Programme Guidelines for 2025 set by the Labour Inspectorate of the Republic of Slovenia, the unit intends to conduct coordinated inspections involving both labour inspectors and occupational safety and health inspectors at large construction sites, which are characterised by a higher risk of violations in both areas. Additionally, there will be targeted inspections in the road transport sector, which often requires oversight due to the unique nature of the work, the employment of foreign workers, and identified issues related to working hours and rest periods.

Programme Guidelines and Focus of the Labour Inspectorate of the Republic of Slovenia

The 2025 Programme Guidelines of the Labour Inspectorate of the Republic of Slovenia foresee a strengthened and more strategically focused approach to supervision in the fields of employment relationships and occupational safety and health. This comes in response to increased risks related to the growing presence of third-country workers, the rise of intermediary forms of employment, and the increasing number of violations concerning wage payments and other fundamental labour rights. Planned activities include both systemic and targeted inspections, carried out through close cooperation between labour inspectors and occupational safety and health inspectors.

In 2025, there is a strong focus on protecting the rights of third-country nationals working in Slovenia. The Labour Inspectorate of the Republic of Slovenia emphasises that this group of workers is particularly

vulnerable due to various circumstances that can place them at a disadvantage. The growing number of workers from Asian countries – who are increasingly matching the number of workers from the former Yugoslav republics – brings about more pronounced cultural and linguistic differences, which in practice often result in higher exposure to violations of labour law. The previously mentioned Priority Response Unit and other inspection teams will focus on lawful payment of wages, compliance with rules on working time and rest periods, and adequate accommodation provided by employers where applicable. Inspectors will also be alert to signs of labour exploitation or even forced labour, particularly in the context of the Labour Inspectorate of the Republic of Slovenia's participation in the joint European initiative JAD 2025.

One of the key priorities of the Labour Inspectorate of the Republic of Slovenia remains the supervision of employers involved in labour outsourcing, as previous years have revealed systemic circumvention of legal provisions through the formal assignment of workers to user companies under the guise of business cooperation. Such practices often violate rules on equal treatment of posted workers compared to those directly employed by the user company. Inspections will therefore focus on verifying whether posted workers enjoy comparable working conditions, pay, and other rights.

In terms of targeted inspections, the Labour Inspectorate of the Republic of Slovenia in 2025 is focusing on several high-risk sectors. In the road transport sector, intensified supervision will address compliance with regulations on working hours and rest periods, with inspectors relying on tachograph data to verify compliance, and the payment of legally mandated supplements to drivers. Special attention will also be given to the proper use of annual leave entitlements.

Increased oversight is also taking place in the construction industry, which remains one of the most critical sectors in terms of both labour law compliance and workplace safety. Construction sites often employ foreign workers who are not adequately informed of their rights and are therefore more vulnerable to abuse. Additionally, construction work presents a

high risk of occupational injuries, including fatal accidents. In the field of occupational safety and health, inspections will focus on proper site protection, fall prevention measures for work at heights or depths, safety during roof work and excavations, the use of personal protective equipment, and the suitability of work equipment.

The Labour Inspectorate of the Republic of Slovenia will also increase oversight in sectors where workers are exposed to hazardous substances, such as carcinogenic formaldehyde in hospitals, welding hazards, and other production environments involving high exposure to chemicals.

Following the adoption of the Regulation on Ensuring Safety and Health of Workers in Manual Handling of Loads in 2023, inspections will also cover compliance with this regulation, as improper handling is a common cause of musculoskeletal injuries among workers.

Due to the rising number of delays in the payment of wages and holiday allowances, the Labour Inspectorate of the Republic of Slovenia is carrying out targeted inspections of employers. This includes those who did not submit the required REK form for holiday allowance payments by the end of 2024 or who failed to make these payments to a significant number of employees. In these cases, inspectors will not only verify the payment of the holiday allowance itself but also check the accuracy of wage payments, salary supplements, and compliance with minimum wage provisions. Inspections in this area will contribute to more consistent enforcement of the fundamental right to remuneration, which is often an early indicator of broader violations within the company.

Conclusion

In 2025, Slovenia is introducing additional measures to strengthen labour law enforcement, improve the protection of vulnerable worker groups, and modernise labour market regulation. Through legislative reforms, targeted inspections, and institutional upgrades, the government wishes to promote fair working conditions, ensure compliance, and support a more resilient and inclusive labour market.

SOUTH KOREA

Law and Practice

Contributed by:

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Yoon & Yang LLC is among the largest and most distinguished full-service law firms in Korea. Its employment and labour practice group, comprising 39 attorneys and professionals, possesses extensive expertise in a comprehensive array of employment and labour law matters. The group's primary areas of practice include general human resources issues – eg, performance-based salary systems, labour union activities, collective bargaining agreements and disciplinary regulations – and employment-related legal matters arising from M&A and corporate restructuring. The team also regularly represents clients in employment-related disputes across civil, criminal and

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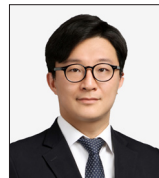
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1. Employment Terms

1.1 Employee Status

Labour laws in the Republic of Korea (“South Korea”) do not distinguish blue-collar workers from white-collar workers, and these terms are merely used to describe employees doing different types of work. Hence, blue- and white-collar workers both fall under “employees”, as defined under the Labor Standards Act, and are subject to identical treatment under other labour-related laws. The Labor Standards Act defines employees as persons who provide labour to businesses or workplaces for the purpose of earning wages, irrespective of job type.

Forms of employment can be largely categorised into two types:

- direct employment by the employer; and
- indirect employment of another employer’s employee.

These forms may be further narrowed down based on the employee’s employment contract period and roles.

1.2 Employment Contracts

Among the various types of employment contracts, the two major types are “employment contracts without a fixed term” (ie, indefinite employment contracts) and “employment contracts with a fixed term” (ie, definite employment contracts). The Labor Standards Act

does not have provisions that separately govern the duration of employment contracts. Therefore, employers and employees may freely determine the duration of the contract.

However, definite employment contracts are governed by the Act on the Protection, etc, of Fixed-Term and Part-Time Workers (the “Fixed-Term Workers Act”). According to Article 4 of the Fixed-Term Workers Act, employment contracts with a fixed term in excess of two years are considered to be indefinite employment contracts.

Article 17 (1) and (2) of the Labor Standards Act provides that employment contracts must explicitly provide for the terms and conditions of employment in writing (which can be in the form of electronic documents). In particular, employment contracts must include provisions on:

- wages (eg, composition of wages, methods for calculating wages and methods for paying wages);
- contractual working hours;
- holidays; and
- annual paid leave.

Moreover, employers are obliged to deliver these employment contracts to employees.

1.3 Working Hours

Since 1 July 2021, the weekly maximum working hours (52 hours) have been applied to businesses or

workplaces that have five or more employees. Article 50 (1) and (2) of the Labor Standards Act provide that working hours may not exceed eight hours per day and 40 hours per week. However, Article 53 (1) allows employers to extend the foregoing working hours, as overtime, by up to 12 hours per week upon obtaining the relevant employee's consent.

For the purposes of determining the working hours, one week refers to seven days, including holidays. Thus, the maximum number of weekly working hours with the permitted extensions is 52 hours (40 hours per week plus up to 12 hours of overtime).

Meanwhile, under limited circumstances where certain criteria are satisfied, the Labor Standards Act recognises the following types of "flexible working systems".

Flexible Working Hours System (Article 51 of the Labor Standards Act)

In a flexible working hours system, working hours are increased during the weeks where work is concentrated but reduced during other weeks so that, on average, the weekly working hours are within the statutory working hours (ie, 40 hours). A flexible working hours system can be utilised for a maximum of six months.

Selective Working Hours System (Article 52 of the Labor Standards Act)

In a selective working hours system, an employee may freely choose their working hours over a certain period (not exceeding one month or, in the case of work pertaining to research and development of new products or new technologies, not exceeding three months), as long as the total working hours do not exceed the statutory working hours for such period. In this system, the employee may decide when they will begin and end work, as well as the number of hours of work in a day.

Presumed Working Hours System (Article 58 (1) of the Labor Standards Act)

Presumed working hours systems are used in circumstances where it is difficult to calculate the hours of work performed by an employee because the employee provides labour outside the workplace. In

a presumed working hours system, employees are presumed to have worked:

- their contractual hours;
- the hours that are typically needed to perform the relevant work; or
- the hours that have been agreed in writing with the employees' representative for particular work.

Discretionary Working Hours System (Article 58 (3) of the Labor Standards Act)

Discretionary working hours systems apply to limited types of work prescribed under the Enforcement Decree of the Labor Standards Act. These types of work have been legally recognised, based on the nature of the work, to require employees' discretion in determining how the work should be performed. In a discretionary working hours system, the working hours that have been agreed in writing between the employer and the employees' representative are recognised as the hours worked by the employees.

Part-Time Contracts

Employees under part-time employment contracts are also considered as "employees" within the meaning of the Labor Standards Act. Hence, the laws do not require part-time employment contracts to have specific terms that are different from ordinary employment contracts. Furthermore, the format used for part-time employment contracts is identical to that of ordinary employment contracts. However, considering the nature of part-time work, a part-time employment contract must clearly indicate the working hours.

Overtime

As described at the beginning of this section, statutory working hours under Article 50 (1) and (2) of the Labor Standards Act may not exceed eight hours per day and 40 hours per week (excluding break times). However, such statutory working hours may be extended as overtime by up to 12 hours per week in accordance with Article 53 (1) of the Labor Standards Act, as long as the employees consent to such overtime.

Article 56 of the Labor Standards Act governs overtime pay. More specifically, at least 50% of the ordinary wage must be paid in addition to the ordinary wage for:

- overtime worked in excess of the statutory working hours (ie, eight hours per day, 40 hours per week);
- work performed during holidays (however, 100% of the ordinary wage applies to holiday work exceeding eight hours); and
- work performed at night (ie, between 10 pm and 6 am).

1.4 Compensation

Minimum Wage Requirements

By 5 August every year, the minister of employment and labour determines the minimum wage applicable in the following year. The publicly announced minimum wage becomes effective as of January 1st of the following year. Currently, the hourly minimum wage for 2025 is KRW10,030. The hourly minimum wage for 2026 is scheduled to be KRW10,320.

Employers are required to pay at least the minimum wage to their employees, pursuant to Article 6 (1) of the Minimum Wage Act. Therefore, in accordance with Article 6 (3) of the Minimum Wage Act, employment contracts that stipulate wages below the minimum wage level are invalidated as to such stipulation and, by operation of law, the wages under such employment contracts are presumed to be minimum wages.

13th-Month and Other Bonuses

There is no legal requirement for employers in South Korea to pay 13th-month bonuses, etc. Under the South Korean labour laws, employers are only obliged to pay monthly wages and severance pay upon an employee's resignation.

To describe employers' obligation to provide severance pay in more detail, Article 8 (1) of the Act on the Guarantee of Workers' Retirement Benefits (the "Retirement Benefits Act") requires employers to set up a system that enables the employers to pay a retiring worker severance pay in the prorated amount equivalent to the average wages earned in 30 days for each year of the resigning employee's continuous service. Therefore, even if severance payments are not covered in employment contracts, or are otherwise covered in the employer's rules of employment, such payments must be provided upon an employee's resignation.

If an employer is paying "periodic bonuses" as 13th-month bonuses in South Korea, such payment is at the employer's complete discretion, and there are no provisions in the Labor Standards Act that prohibit such bonuses.

Government Intervention

The minimum wage system is a classic example of the government's intervention in compensation. The government determines the minimum wage on a yearly basis. For 2025, the hourly minimum wage is KRW10,030.

Aside from the minimum wage system, the government may make compensation-related interventions by overseeing whether employers are – among other things – paying statutory severance, as well as the additional wages that must be paid for work performed overtime, during holidays or at night.

1.5 Other Employment Terms

Vacations and Vacation Pay

The most typical types of vacation available for employees are:

- weekly holidays;
- public holidays (ie, holidays prescribed under presidential decree); and
- annual paid leave.

Weekly holiday (under Article 55 of the Labor Standards Act and Article 30 of the Enforcement Decree of the Labor Standards Act) refers to a paid vacation given to employees who have "worked continuously" for the contractual working days in a single week. If employees provide such "continuous work" for contractual working days in one week, employers are required to grant, on average, more than one paid vacation per week.

A public holiday prescribed under presidential decree refers to statutory holidays (excluding Sundays) and alternative statutory holidays, which are provided under the Regulation on Holidays of Government Offices. An employer must guarantee such public holidays to its employees on a paid basis. However, an employer may substitute public holidays with other working days by entering into a written agreement

with the employee representative (see Article 55 (2) of the Labor Standards Act).

Annual paid leave is prescribed under Article 60 of the Labor Standards Act, and it refers to the 15 days of paid vacation granted to employees who have worked for at least 80% of a year. If an employee has provided continuous work for less than a full year or worked less than 80% of a year, then one day of paid vacation is granted as annual paid leave for every month in which an employee provided continuous work.

Required Leave

Leave that is statutorily guaranteed includes maternity leave, paternity leave, fertility treatment leave, childcare leave, family-care leave, short-term family-care leave and menstrual leave.

Maternity leave

Maternity leave is covered under Article 74 (1) of the Labor Standards Act, and it refers to the leave granted to pregnant women prior to and after childbirth. Statutes on maternity leave are mandatory provisions and, thus, neither the employer's right to adjust the timing of such leave nor an employee's forfeiture of the right to take such leave is recognised under the law. Employers must grant a total of 90 continuous days of leave prior to and after childbirth, and at least 45 days of this 90-day leave must be allocated after childbirth (however, 100 days must be granted to a pregnant employee who gives birth to a premature baby, and 120 days to a pregnant employee who is pregnant with two or more children at a time).

Paternity leave

Paternity leave is covered under Article 18-2 of the Equal Employment Opportunity and Work-Family Balance Assistance Act (the "Equal Employment Opportunity Act"). If an employee notifies paternity leave due to their spouse giving birth, their employer is obliged to grant them 20 days' leave. However, paternity leave cannot be used if 120 days have passed since the employee's spouse gave birth to the child. Paternity leave is granted to an employee on a paid basis. An employer is prohibited from dismissing, or taking any disadvantageous measures against, an employee on the basis of paternity leave.

Fertility treatment leave

Fertility treatment leave is covered under Article 18-3 of the Equal Employment Opportunity Act. If an employee requests fertility treatment leave in order to receive medical treatment, such as artificial insemination or in vitro fertilisation, their employer is obliged to grant up to six days of leave per year, of which the first two days shall be paid leave.

Childcare leave

Childcare leave is covered under Article 19 of the Equal Employment Opportunity Act. An employer must permit childcare leave of up to one year if:

- a female employee requests childcare leave to protect her motherhood during pregnancy; or
- an employee requests childcare leave to tend to their child who is eight years of age or younger, or in second grade or lower in elementary school.

Further, where both parents each take no less than three months of childcare leave for the same child, the parents may each use up to six months of additional childcare leave beyond the one-year limit described in the foregoing.

Upon returning from childcare leave, the employer must reinstate the returning employee to the same position, or a position at the same wage level, as they had prior to taking the childcare leave.

Family-care leave

Family-care leave is covered under Article 22-2 of the Equal Employment Opportunity Act and Article 16-3 of the Enforcement Decree of the same act. An employee may request family-care leave to care for their grandparents, parents, spouse, parents-in-law, children or grandchildren (hereinafter, referred to as "family") on the grounds of disease, accident or senility. If family-care leave is requested, an employer is obliged to grant up to 90 days of leave per year. Family-care leave may be taken on multiple occasions, provided that each period of leave is at least 30 days long.

Short-term family-care leave

This is also covered under Article 22-2 of the Equal Employment Opportunity Act and Article 16-3 of the Enforcement Decree of the same act. An employee

may request short-term family-care leave urgently to care for their family on the grounds of disease, accident or senility, or to urgently care for their children. If short-term family-care leave is requested, an employer is obliged to grant up to ten days of leave per year, which may be taken in increments as short as a single day. The number of days taken as short-term family-care leave is counted towards the ordinary family-care leave.

Menstrual leave

Menstrual leave is covered under Article 73 of the Labor Standards Act. Employers must grant one day of unpaid menstrual leave per month upon request from a female employee.

Confidentiality and Non-Disparagement Agreements

There are no provisions under the South Korean labour laws that restrict employers from requiring confidentiality and non-disparagement obligations from their employees. Therefore, employers may lawfully enter into confidentiality and non-disparagement agreements with employees. An employee's breach of such agreements would enable their employer to take disciplinary action. Furthermore, if an employer suffers damages from an employee's breach of confidentiality and non-disparagement agreements, then the employer would be able to seek civil damages.

In addition to contractual agreements on confidentiality, trade secrets – as defined under the Unfair Competition Prevention and Trade Secret Protection Act (the "Trade Secret Act") – are legally protected. According to Article 2 of the Trade Secret Act, trade secrets refer to information (including production methods, sale methods and useful technical or business information for commercial activities) that:

- is not publicly known;
- has been maintained as a secret; and
- has independent economic value.

In other words, for a trade secret to be protected under the law, it must be undisclosed, kept confidential and useful. Undisclosed trade secrets are those that are not publicly known, and the confidentiality element requires the trade secret to be a secret that deserves

legal protection. Lastly, a trade secret is useful if it has independent economic value.

Therefore, as long as a trade secret satisfies all three of the above-mentioned requirements, then a person (including an employer) may request a prohibition or preventative order from the court against any person (including an employee) who infringes or is likely to infringe trade secrets if the business interest of the employer who possesses the trade secrets suffers damages or is likely to suffer damages due to such infringement (see Article 10 (1) of the Trade Secret Act).

Employee Liability

South Korean labour laws do not have provisions that restrict or limit an employee's contractual or tort liabilities. However, the South Korean Supreme Court has previously held that where an employer suffers direct damages due to an employee committing a tortious act while performing their work, then such employer's right to claim damage compensation from the employee is limited – based on the notion of fair distribution of the damages – to an amount that is deemed appropriate under the principle of good faith. In this regard, employee liability can be deemed to be partially limited.

On a separate note, the obligations of employees are not expressly governed under the Labor Standards Act. Rather, employees' obligations are stipulated under the employers' rules of employment. Some of the common obligations of employees include:

- arriving at work on time;
- not holding concurrent positions;
- keeping secrets acquired in connection with work confidential;
- not destroying or removing equipment or facilities from the company;
- not engaging in unlawful conduct;
- expending full effort at work; and
- performing work in a diligent manner in good faith.

Breach of such obligations and responsibilities may subject the relevant employees to disciplinary action.

2. Restrictive Covenants

2.1 Non-Competes

The Korean Commercial Act imposes a non-compete obligation upon directors, whereas employees are not subject to the same restriction. Nevertheless, employees' non-compete obligation can be partially recognised through interpretations of court precedents.

The South Korean Supreme Court has held that where an employment contract has a non-compete clause, such clause is valid as long as it is reasonable. However, if a non-compete clause excessively restricts employees' constitutionally protected rights (eg, freedom in choosing jobs or providing labour) or free competition, then such non-compete clause is invalid for going against Article 103 of the Civil Act.

The Korean Supreme Court further held that, to determine whether a non-compete clause is valid, there must be comprehensive consideration of various factors. Among other things, the court considers:

- whether the employer has an interest that necessitates protection;
- the resigning employee's position and rank;
- the reasons for the employee's resignation;
- territorial scope, time period and the types of jobs restricted through the non-compete clause;
- whether the employee received compensation in exchange for signing the non-compete clause; and
- public interest furthered by the non-compete clause.

2.2 Non-Solicits Employees

South Korean labour laws do not forbid or restrict non-solicitation clauses that prohibit former employees from soliciting other employees who remain employed by the former employer. Therefore, employers may include such non-solicitation provisions within their employment contracts, and they may require their employees to pay liquidated damages pursuant to Article 398 of the Civil Act for a breach of such an agreement. In addition to liquidated damages, employers may seek civil damages for breach of contract if the employer suffers ascertainable damages from the employee's breach.

Non-solicitation clauses can also trigger issues regarding trade secret infringements under the Trade Secret Act. The South Korean Supreme Court has held that where a person who acquires technological information that qualifies as a trade secret moves to another company and attempts to disclose and use such trade secret at such other company, then such an act constitutes violation of the confidentiality obligation under Article 2.3 (D) of the Trade Secret Act. Furthermore, the company that recruits such person is in violation of Article 2.3 (A) for unlawfully acquiring a trade secret if such company has failed to exercise due care and supervision in preventing its employees from unlawfully using the trade secrets of another company.

Customers

It is difficult to deem a former employee's solicitation of their former employer's customers as an infringement of trade secrets within the meaning of the Trade Secret Act.

However, South Korean labour laws do not forbid or otherwise restrict an employer from requiring its employees to sign an employment contract that includes a non-solicitation clause prohibiting those employees from soliciting the employer's customers upon termination of the employment relationship.

3. Data Privacy

3.1 Data Privacy Law and Employment

In South Korea, the Personal Information Protection Act serves as the framework act in relation to data privacy. As such, unless otherwise regulated through separate legislations, data privacy and personal information are governed by the Personal Information Protection Act.

In the past, the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc (the "Info-communications Act") and the Credit Information Use and Protection Act (the "Credit Information Act") stipulated provisions that governed an individual's data privacy and personal information separately from the Personal Information Protection Act. However, as a result of an amendment

to the Personal Information Protection Act in 2020, provisions on data privacy and personal information under the Info-communications Act and the Credit Information Act have been consolidated under the Personal Information Protection Act.

Due to an additional amendment to the Personal Information Protection Act that took effect on 3 March 2023, special rules that continued to apply to providers of information and communication services under the Info-communications Act are now governed under the Personal Information Protection Act. However, despite the foregoing consolidation, the Credit Information Act still has certain provisions that govern data privacy and personal information as they relate to credit information.

Duty To Comply

An employer's duty to comply with the Personal Information Protection Act begins from the recruiting stage and extends beyond the termination of the employment agreement with its employees. During the foregoing period, the employer must collect and/or use the employee's personal information in compliance with the Personal Information Protection Act. Employers may independently collect and/or use the employee's personal information, and, if necessary, employers may also:

- outsource work relating to the processing of collected personal information; or
- provide collected personal information to third parties in accordance with the relevant laws.

Employers are required to store the collected personal information safely. The collected personal information must be destroyed once it is no longer necessary owing to reasons such as:

- fulfilling the purposes for which the personal information was collected; and
- expiration of the storage period of the collected information (here, "storage period" refers to the period consented to by the employees or otherwise prescribed under the applicable laws).

4. Foreign Workers

4.1 Limitations on Foreign Workers The Immigration Act and Foreign Worker Employment Act

Methods of employing foreigners can be largely divided into two categories. The first method is through the "Hiring Foreigners With Professional Skills" system and "Other Status Stay That Permits Employment (mainly those who are not professionals but simple-skilled workers)" under the Immigration Act. The second method is via the "Employment Permit System" and "Work Permit System" based on the Act on Employment, etc., of Foreign Workers (the "Foreign Worker Employment Act").

The Employment Permit System is a system that allows an employer to employ certain foreigners if that employer cannot hire domestic employees despite its recruiting efforts. The Work Permit System, on the other hand, allows a foreigner who satisfies certain conditions to obtain a work permit in South Korea to be employed with an employer of such foreigner's choice. This system allows for a relatively broader movement of foreign workers among workplaces in South Korea compared to the Employment Permit System. In South Korea, the Employment Permit System ordinarily serves as the default system for hiring manual labourers. As regards Koreans who hold foreign nationalities, the Work Permit System is applied.

Defining foreign workers

Article 2 of the Foreign Worker Employment Act defines a "foreign worker" as a person who does not have South Korean nationality and who provides or desires to provide labour in return for wages in any business or workplace situated within South Korea. Anyone within the meaning of foreign worker must satisfy the requirements and follow the requisite procedures under the Foreign Worker Employment Act to be employed in South Korea. In addition, any matters not provided under the Foreign Worker Employment Act relating to entering, leaving or staying in South Korea must be handled in accordance with the Immigration Act.

Pursuant to Article 18 of the Foreign Worker Employment Act, a foreign worker may pursue employment

activities for up to three years from the date they entered Korea. Furthermore, foreigners staying in Korea, as a principle, are subject to the sovereignty of Korea. Additionally, unless a foreigner's rights under public or private laws are otherwise restricted through treaties or laws, foreigners and Koreans receive identical protection.

Visas

The Foreign Worker Employment Act does not apply to foreigners with visas in any of the following categories who are permitted to stay and work in South Korea (ie, visas that allow the visa-holder to pursue employment activities in South Korea):

- short-term employees (C-4), professors (E-1), foreign language instructors (E-2), researchers (E-3), technology transfer (E-4), professional employment (E-5), artistic performers (E-6) and designated activities (E-7);
- residence permits for overseas South Koreans, such as permanent residence (F-2, F-4, F-5, F-6); and
- working holiday (H-1).

4.2 Registration Requirements for Foreign Workers

According to Article 6 (1) of the Foreign Worker Employment Act, a person who intends to hire “ordinary” foreign workers (through the Employment Permit System) must first post a job opening for a domestic worker through an employment security office defined under the Employment Security Act.

If, despite these efforts to hire a domestic employee, an employer fails to hire new personnel, then – as prescribed under Article 8 (1) of the Foreign Worker Employment Act – the employer must apply for an employment permit for foreign workers from the head of the employment security office, in accordance with the requirements under the enforcement decrees of the Ministry of Employment and Labor.

If an employer satisfies the conditions for employing foreigners, then the employer may apply for the issuance of an employment permit from an employment assistance centre. Upon receipt of such application, the employment assistance centre makes worker

referrals (in multiples of three). The employer can then select the personnel qualified for the job from among the referred workers and obtain an employment permit for such worker (see Article 8 of the Foreign Worker Employment Act).

Simultaneously upon issuance of the employment permit, a standard employment contract is drafted based on the working conditions described in the employer's application for the employment permit.

Once said employment contract is executed, a visa issuance certificate is issued. Thereafter, upon the selected foreign worker's arrival in South Korea and completion of employment training, they are dispatched to the relevant workplace.

According to Article 31 of the Immigration Act, any foreigner (including foreign workers) who intends to stay in Korea for more than 90 days must file for an alien registration with the competent immigration office within 90 days from the date of entry into Korea. Further, changes to previously registered information (eg, the visa type or previously registered address) must be reported within 14 days for an amended registration.

5. New Work

5.1 Mobile Work

Mobile work has recently been receiving heightened attention from many companies. Mobile work in South Korea generally refers to performing one's tasks via smartphones, tablet computers, laptops and other mobile devices. South Korean labour laws do not have provisions that govern mobile work; hence, companies may freely implement mobile work in accordance with their needs.

Advantages

From the employees' perspective, the benefits of mobile work include the ability to perform their work without restraint in terms of time and location. Moreover, the freedom to choose where to work may lead to enhanced work efficacy and work satisfaction. Employers may also enjoy benefits of mobile work such as reduced costs for maintaining office spaces

and increased performance arising from higher work efficacy.

Disadvantages

There are, however, downsides to mobile work. Employees often use mobile devices for both personal and work purposes, which increases vulnerability in relation to information security in comparison with working from an office that is physically protected by various security facilities and measures. Furthermore, given that employees performing mobile work generally work alone, they may be more susceptible to feeling socially isolated or experiencing attention deficit, among other things. In addition, if an employee is injured while working at a location other than the office, there may be difficulties in determining whether such injury was caused by an industrial accident covered under the Industrial Accident Compensation Insurance Act.

Steps Employers Can Take

Companies that intend to implement mobile work are advised to address the foregoing disadvantages by taking precautionary measures such as:

- establishing the necessary information security system;
- devising means to strengthen the bond among employees; and
- creating manuals to prevent occupational injuries or accidents.

5.2 Sabbaticals

“Sabbatical” in Korean generally refers to sending a long-tenure employee on paid leave for a certain period as a reward for, and in recognition of, the employee’s continued services. Sabbatical leave is not governed under South Korean law. However, given that Korean labour laws stipulate only the statutory minimum protections for employees, companies have full discretion to provide sabbatical leave to their employees in addition to their statutory required leave (eg, annual paid leave).

As previously mentioned, sabbatical leave is generally granted to long-tenure employees. However, sabbatical leave is not a common type of leave in South

Korea, and most companies in South Korea do not provide it to their employees.

However, a company may wish to provide sabbatical leave in order to attract talented employees, promote long-term employment or accommodate and compensate long-tenure employees. In such cases, the company should consider stipulating provisions within its rules of employment to govern sabbatical leave (eg, eligibility for sabbatical leave, sabbatical leave duration and procedures to apply for sabbatical leave) before implementing said leave.

5.3 Other New Manifestations

“Smart Work”

Companies have recently begun actively implementing a new method of performing work, called “smart work”, in response to the outbreak of COVID-19, the emergence of new technologies and the trend towards valuing work efficacy. Smart work is a concept that encompasses less traditional working environments, such as working from home, hot-desking and working from base offices (ie, work spaces maintained outside the headquarters of a company in locations that are more accessible to employees).

By way of example, companies have begun allowing employees to work from home on a regular basis to induce enhancements in productivity and performance while reducing the costs of maintaining office spaces. Some companies have also adopted hot-desking, which enables employees to select their preferred work spaces (eg, window-side, open desk or partitioned desk) to increase work efficacy. Other companies have opened up new office spaces in remote locations that are more accessible to, or preferred by, their employees in order to reduce their commuting burden.

Overall, companies are experimenting with various types of smart work to explore new working methods and environments that are mutually beneficial to the company and its employees. This trend is anticipated to continue in light of the developments in technology, the acknowledgement of benefits associated with non-traditional working arrangements and changes in the values sought by employees.

6. Collective Relations

6.1 Unions

Article 2.4 of the Trade Union and Labor Relations Adjustment Act (the “Trade Union Act”) defines a trade union (ie, a labour union) as “an organisation or associated organisations of employees, which is [or are] formed voluntarily and collectively upon the employees’ initiative for the purpose of maintaining and improving their working conditions and enhancing their economic and social status”. However, such organisation or associated organisations of employees is/are not considered as a trade union if:

- an employer or other person who always acts in the interest of the employer is allowed to join;
- most of the union’s expenditure is funded by the employer;
- its activities are only aimed at mutual benefits, moral culture and other welfare undertakings (as opposed to enhancing employees’ working conditions);
- those who are not employees are allowed to join the union; or
- the main purpose of the union is to engage in political activities.

The most important function and role of a trade union is engaging in “collective bargaining” with the employer and thereby executing a “collective agreement” to foster enhancement and preservation of employees’ working conditions (see Articles 29 and 31 of the Trade Union Act).

In addition, trade unions may engage in “collective actions” to carry through their position in a dispute with the management arising from disagreements concerning working conditions (see Articles 2.5 and 2.6 of the Trade Union Act).

6.2 Employee Representative Bodies

Article 29 of the Trade Union Act confers on the representative of a trade union the authority to bargain and enter into a collective agreement with the employer on behalf of the trade union and its members. Hence, any by-laws or internal regulations applicable to trade unions that limit the foregoing authority of a trade union representative are deemed invalid.

Neither the Trade Union Act nor any other relevant laws provide methods for appointing or electing a representative of a trade union. Therefore, the methods and procedures for appointing or electing a trade union representative are determined through by-laws or internal regulation of the trade unions, and the trade union representative should be appointed or elected accordingly.

As a result of the implementation of the 6 July 2021 amendment to the Trade Union Act, dismissed employees and job-seekers may join a company’s union. However, union members who are not current employees of the company are subject to certain limitations in their union activities. By way of example, non-employee union members may only engage in union activities to the extent that such activities do not hinder efficient operation of the company’s business, and they may not serve as an officer of the union. Furthermore, the number of non-employee union members is not counted for the purposes of:

- determining the limits of working hours exemption;
- selection of the union representative for collective bargaining; and
- voting for or against taking industrial action.

6.3 Collective Bargaining Agreements

“Collective agreement” refers to a written agreement that details the terms of trade union members’ working conditions (eg, their wages and working hours) that have been negotiated through the collective bargaining process. Collective agreements are signed and executed by and between the trade union and the employer.

Collective agreements not only define the contractual obligations of the parties, but also have a normative effect in regulating the employment contract between the employer and individual employee. By way of example, Article 33 of the Trade Union Act invalidates portions of the employment contract or the employer’s rules of employment that fall foul of the standards for working conditions stipulated in the collective agreement. In other words, a collective agreement that has been entered into on an equal footing between the workers and the management takes precedence over

individual employment contracts or rules of employment set by the employer.

Collective agreements also entail a “peace obligation” that, during the effective period (maximum of three years) of the collective agreement, requires the parties to mutually comply with the provisions within the collective agreement and prohibits the trade union from taking collective action for the purposes of modifying terms of the collective agreement that have already been agreed between the parties.

Ordinarily, contracts are binding only upon the parties to such contracts. For collective agreements, however, the binding effect of the agreement may also extend to third parties (ie, non-parties to the agreement) if “certain conditions are satisfied” (see Articles 35 and 36 of the Trade Union Act).

7. Termination

7.1 Grounds for Termination

In South Korea, termination of employment can occur in the following ways:

- occurrence of grounds for automatic termination (eg, employee reaching retirement age, death of the employee or expiry of the contract period);
- the employer’s unilateral dismissal of the employee; and
- termination through mutual agreement between the employer and employee.

There is no difference in procedures depending on the grounds for dismissal; hence, the general requirements for dismissal are identical regardless of the grounds on which an employee is dismissed. In particular, Article 26 of the Labor Standards Act prescribes that an employer must give an employee prior notice of at least 30 days if the employer intends to dismiss such employee. If this notice requirement is not satisfied, the employer must pay the employee an additional sum of money equivalent to at least 30 days’ worth of the employee’s ordinary wages. The foregoing requirement applies even in circumstances where employees are dismissed owing to managerial reasons.

In addition to the prior notice requirement, to dismiss an employee, the employer must provide the employee with “written” notice in accordance with Article 27 of the Labor Standards Act. Furthermore, the written notice must describe the reason for dismissing the employee as well as when the employee is to be dismissed.

Automatic Termination

No “motivation” is required for automatic termination where employment is terminated, irrespective of the employer or employee’s intent. However, if employment is terminated owing to expiry of the contract period, and if the employee concerned had a legitimate expectation for renewal of their employment contract, then it may be difficult for the employer to terminate the employment relationship unilaterally against the relevant employee’s will without a justifiable cause.

Unilateral Dismissal

Article 23 (1) of the Labor Standards Act requires employers to have a justifiable cause when dismissing, laying off, suspending or transferring an employee, reducing an employee’s wages or taking other disciplinary actions. As such, employers may only terminate employees against their will if the employer has a “justifiable cause”. The South Korean Supreme Court has defined that there is a justifiable cause if, owing to a fault attributable to the employee, it is impossible for the employer and the employee to continue their employment relationship under generally accepted social norms.

Mutual Termination

This refers to termination of employment upon the employer’s and employee’s mutual agreement. Mutual terminations can further be narrowed down to, among others, cases where employees voluntarily resign by submitting a letter of resignation or employees accept the employer’s suggestion to resign, in which case the employment relationship is terminated upon the parties’ execution of a separation agreement.

Collective Redundancies

Article 24 of the Labor Standards Act governs dismissals based on managerial reasons, including mass lay-offs (ie, collective redundancies). For an employer

to dismiss its employees for managerial reasons, all of the following requirements must be met:

- there must be an urgent managerial need;
- the employer must make every effort to avoid the dismissals;
- the employer must select employees to be dismissed based on reasonable and fair standards; and
- the employer must notify the employee representative of the dismissal no later than 50 days prior to the dismissal and engage in good-faith discussions with said employee representative.

These requirements have been further explained by the Supreme Courts, as follows.

Urgent managerial need

An urgent managerial need is not limited to circumstances where a lay-off is required for the company to avoid bankruptcy. If there is a reasonable and objective need for a reduction in the workforce to prepare for a potential future risk, then such need qualifies as an urgent managerial need.

Efforts to avoid dismissal

“Making every effort to avoid dismissals” refers to taking all possible measures to minimise the number of dismissals by, among other things, streamlining work methods or managerial policies, freezing new hires, utilising temporary suspensions, suggesting voluntary resignations (by offering additional compensation, etc) and transferring employees. The measures to be taken and their degree are neither fixed nor conclusively defined; thus, whether adequate measures were taken depends on multiple factors, including the managerial risks faced by the relevant employer, managerial reasons as to why lay-offs should be made, the type and scale of the business, and the number of employees at various levels.

Reasonable and fair standards

The definition of “reasonable and fair standards” is also fluid. It considers various factors to determine what is “reasonable and fair”, such as the magnitude of the managerial risks faced by the relevant employer, the managerial reasons that necessitate lay-offs, the type of business performed by the relevant division

and the composition of its employees, and the social and economic conditions during the period when lay-offs are deemed necessary. Furthermore, when determining the standards for selecting the employees to be laid off, the employer’s circumstances relating to its managerial interests can be considered concurrently with the employees’ interests, as long as the employer’s interest is objectively reasonable.

Notice period

The final requirement of 50 days’ notice and a good-faith discussion does not affect the validity of a lay-off, even if it is not satisfied. Therefore, if there has been sufficient time (albeit not 50 days) to notify the employees and engage in good-faith discussions, the lay-off is valid as long as all other requirements have been satisfied.

7.2 Notice Periods

Notice Periods

As noted in 7.1 **Grounds for Termination**, employers must, pursuant to Article 26 of the Labor Standards Act, give an employee prior notice of at least 30 days if the employer intends to dismiss such employee. This notice requirement also applies to dismissals due to managerial reasons.

Other than the foregoing, the Labor Standards Act does not provide a mandatory notice period for terminations. However, if the employer provides a separate notice period in its rules of employment that are not required by law, then such procedures must be complied with.

In addition to the mandatory notice requirements for terminations mentioned in the foregoing, employers are required to provide prior notice when initiating procedures for taking disciplinary actions if the employers’ rules of employment or other internal policies require such prior notice. Even if no such procedural requirement is stipulated in the employer’s rules or policies, it is recommended that the employers still provide prior notice before the HR committee meeting, in which case prior notice of one week is generally considered appropriate.

Severance

If an employer fails to give the requisite notice of 30 days before dismissing an employee, then the employer must pay the employee an additional sum of money equivalent to at least 30 days' worth of the employee's ordinary wages pursuant to Article 26 of the Labor Standards Act.

Also, aside from the requirements to provide prior notice and pay an additional allowance for failing to provide prior notice, there are further severance pay-related requirements under the Retirement Benefits Act that require employers to provide severance payments, or retirement pensions, to resigning employees who have been employed for at least one year. To provide these payments or pensions, an employer is required to operate a retirement benefit scheme in accordance with the Retirement Benefits Act.

7.3 Dismissal for (Serious) Cause

Article 23 (1) of the Labor Standards Act requires an employer to have justifiable cause when dismissing an employee. The South Korean Supreme Court has defined that there is a justifiable cause if, owing to a fault attributable to the employee, it is impossible for the employer and the employee to continue their employment relationship under generally accepted social norms. Whether continuance of the employment relationship is impossible under generally accepted social norms is determined by comprehensive consideration of various factors, including:

- the purpose and nature of the employer's business;
- workplace conditions;
- the employee's position and responsibilities;
- how and why the employee engaged in misconduct;
- the impact such misconduct will have on the sound order of the business; and
- the employee's past behaviour.

Common Grounds for Dismissal

Ordinarily, grounds for dismissal are stipulated under a company's rules of employment and other relevant internal regulations. Some of the most common grounds for dismissal recognised through court precedents are:

- misrepresentation or concealment of educational background and work experience;
- fabricating curriculum vitae (CVs);
- bad behaviour at work, such as unexcused absences;
- refusing to follow orders relating to personnel movements (eg, transfers);
- assaulting colleagues or supervisors;
- inflicting harm on the company through criminal conduct (eg, embezzlement, breach of duty); and
- personal misconduct committed outside the workplace.

Valid Dismissals

Pursuant to the Labor Standards Act, an employer must provide 30 days' notice prior to the employee's dismissal (Article 26) and provide the detailed reason for, and timing of, the dismissal in writing (Article 27).

Furthermore, if an employer has collective agreements, rules of employment, employment contracts or other relevant agreements that separately provide additional procedures for taking disciplinary actions, then the employer must comply with such procedures. The South Korean Supreme Court has also held that disciplinary dismissals are invalid if an employer fails to follow the procedures laid out in its collective agreements, rules of employment, employment contracts or other relevant agreements when dismissing an employee.

An employer's dismissal of an employee is valid if the employer can justify:

- its reason(s) for taking the disciplinary action;
- the procedures followed for taking the disciplinary action; and
- the level and/or adequacy of the disciplinary action taken.

However, the South Korean Supreme Court has held that if any of the foregoing factors cannot be justified, then the resulting disciplinary dismissal is invalid.

7.4 Termination Agreements

An employer and employee may terminate their employment relationship upon mutual agreement. There are no specific requirements as to the methods

of – or procedures/formalities for – mutually agreeing to terminate the employment relationship, as long as the termination is based on the employer's and employee's free will. Ordinarily, however, an employee voluntarily submits a letter of resignation to the employer, and the employer accepts such letter of resignation by the employee to terminate the employment contract.

The Labor Standards Act does not govern voluntary terminations of employment based on the free will of both the employer and employee. Although the Labor Standards Act does not have any restrictions on employers and employees terminating their relationship through a mutual agreement, the South Korean Supreme Court deems termination agreements to be invalid if such mutual agreement was not a product of the employee's genuine intent.

7.5 Protected Categories of Employee

Article 23 (2) of the Labor Standards Act protects an employee from dismissal when:

- they are on leave for medical treatment of an occupational injury or disease and within the 30 days immediately following their return to work; and
- when an employee is on maternity leave and within the 30 days immediately following their return to work.

However, the foregoing protections do not apply if the employer has paid lump-sum compensation to the relevant employee in accordance with Article 84 of the Labor Standards Act, or if the employer is no longer able to continue its business.

The Labor Standards Act does not have provisions relating to dismissals, etc., of an employee representative. However, if the collective agreement (or other similar agreement) requires the employer to obtain the trade union's consent to dismiss an employee representative or a union member, then the employer must comply with such requirement. Otherwise, the employer's actions against the relevant employees are deemed invalid pursuant to South Korean Supreme Court precedents.

8. Disputes

8.1 Wrongful Dismissal

An employee may make a wrongful dismissal claim by:

- filing a civil suit for invalidation of the dismissal and disputing whether the dismissal was justified; and
- petitioning for wrongful dismissal relief from the local Labor Relations Commission (the "Local Commission").

The civil suit for invalidation of dismissal and petition for wrongful dismissal relief are two independent systems. Therefore, an employee may choose to proceed with either or both of the systems.

Civil Suit

When an employee proceeds with the first of the two above-mentioned options and subjects the dismissal to a dispute, then the court of first instance must decide as to the validity of the dismissal. Both the employer and employee may challenge the court of first instance's decision by filing an appeal within two weeks from the date the written court decision was served to the relevant party. If either of the parties wishes to challenge the decision rendered by a High Court or a panel of district court judges acting as a court of second instance, then the parties must file an appeal to the Supreme Court within two weeks from the date the written decision was served for a final and conclusive judgment.

Petition for Relief

If an employee proceeds with the second option, then the petition for relief must be filed with the Local Commission within three months from the date the employee was dismissed. Once the petition for relief is filed, the Local Commission determines whether the employer was justified in dismissing the employee. Article 31 of the Labor Standards Act provides that both the employer and employee may challenge the Local Commission's decision by submitting a request for a new examination to the National Labor Relations Commission (the "National Commission") in accordance with the Labor Relations Commission Act within ten days of being notified of the Local Commission's decision.

If either of the parties wishes to challenge the National Commission's decision on a re-examination, then the relevant party must file an administrative lawsuit in accordance with the Administrative Litigation Act within 15 days of being served with the National Commission's decision. The administrative lawsuit can be appealed twice, much like the first option (ie, a civil lawsuit).

In the past, where the petitioning employee could not be reinstated to their original position owing to expiry of the contract period or reaching retirement age, the Labor Relations Commission dismissed the employee's petition without reviewing the claim because the petition did not satisfy the criteria for a review. However, the Labor Standards Act, which came into force on 19 November 2021, prescribes the following in Article 30 (4): "The Labor Relations Commission shall issue a remedial order or dismissal decision (ie, dismissing the case on merits after reviewing the claim) in accordance with paragraph (1) even if the employee cannot be reinstated to [their] original position (or for cases other than dismissal, reinstated to [their] original condition) due to expiration of contract period, reaching retirement age, etc. In such a case, if the Labor Relations Commission determines that the dismissal was unlawful, it may order the employer to pay the employee an amount equivalent to the wages the employee would have received had the employee continued to provide services during the period they were dismissed (or for cases other than dismissal, an amount equivalent to reinstate the employee to [their] original condition)".

Therefore, the Labor Relations Commission must review the petition filed by an employee irrespective of whether the employee can or cannot be reinstated to their original position (or original condition if the employee was not dismissed) and either render:

- a remedial order (if the employee's petition is supported by justifiable cause); or
- a dismissal decision (if the employee's petition is not supported by justifiable cause).

8.2 Anti-Discrimination

South Korean labour laws that prohibit employers from discriminating against employees include the:

- Labor Standards Act;
- Equal Employment Opportunity Act;
- Fixed-Term Workers Act;
- Act on the Protection, etc, of Temporary Agency Workers (the "Temporary Agency Workers Act"); and
- Act on the Prohibition of Age Discrimination in Employment and Elderly Employment Promotion (the "Age Discrimination Act").

The foregoing legislation protects employees from various types of discrimination identified in the legislative intent and purpose of the acts, as follows.

- Labor Standards Act – Article 6 prohibits employers from discriminating against employees based on gender. Furthermore, employers are prohibited from discriminating in relation to employees' working conditions based on nationality, religion or social status.
- Equal Employment Opportunity Act – Article 7 (1) prohibits employers from discriminating on the basis of gender when recruiting or hiring employees. Also, Article 8 (1) prohibits wage discrimination by requiring employers to provide equal pay for equal work performed within the same business.
- Fixed-Term Workers Act – Article 8 (1) prohibits employers from discriminating between employees under definite employment contracts and employees under indefinite employment contracts who work in the same business or workplace, and in the same or similar positions.
- Temporary Agency Workers Act – Article 21 (1) prohibits employers of agency employees (ie, dispatch agencies) and users of dispatched agency employees (ie, companies that use dispatched agency employees; "user companies") from discriminating between such dispatched employees and other employees of the user company who perform the same or similar work.
- Age Discrimination Act – Article 4-4 (1) prohibits employers from discriminating against employees on the basis of age, without justifiable grounds, as to the following:
 - (a) recruitment and employment;
 - (b) wage, provision of money and valuables other than salary, and other welfare benefits;

- (c) education and training;
- (d) job placement, transfer or promotion; and
- (e) retirement and dismissal.

Burden of Proof

Ordinarily, the party raising a legal claim bears the burden of proof in substantiating their claim. However, South Korean labour laws determine whether laws have been violated based on substantive – as opposed to formalistic – standards when the employment relationship between an employer and an employee is at issue. In particular, Article 30 of the Equal Employment Opportunity Act expressly provides that the burden of proof is shifted to employers when resolving disputes arising out of this act.

Relief and Damages

Article 9 (1) of the Fixed-Term Workers Act and Article 21 (2) of the Temporary Agency Workers Act enable fixed-term employees, part-time employees and dispatched employees who have been discriminated against to file a petition to the Local Commission for a corrective order against the discrimination such employees were subject to. Furthermore, as of 19 May 2022, employees have been enabled to seek relief from the Labor Relations Commission for discrimination prohibited under the Equal Employment Opportunity Act. Although the Labor Standards Act and the Age Discrimination Act do not expressly provide the opportunity to seek relief from the Local Commission or the National Commission, remedies for violations of these acts (including unlawful discrimination) can be obtained through filing:

- petitions with the Ministry of Employment and Labor;
- civil lawsuits with the court; or
- criminal complaints with the investigative authorities.

Separate from the foregoing, an employee may also seek compensation for any pecuniary damages and/or emotional distress they have suffered due to the employer's discrimination without reasonable cause.

8.3 Digitalisation

Increased Use of Virtual Hearings Through Amendment of the Civil Procedures Act and Criminal Procedures Act

The amendments to the Civil Procedures Act and the Criminal Procedures Act, which came into effect on 18 November 2021, provided grounds for expansion of the use of virtual hearings.

Civil litigations

For civil litigations, virtual hearings may be held:

- if the presiding judge deems it appropriate; or
- at the request of, or consent by, the parties if the court deems it difficult for a party to appear before the court in person owing to a traffic inconvenience or any other reason. Virtual hearings may be held not only for the pleading hearing, but also for preparatory pleading and examination hearings.

Criminal litigations

For criminal litigations, the appearance of the party is an absolute requirement; hence, trials may not be held virtually. However, preparatory hearing and witness examinations may be conducted virtually if the court deems this reasonable after hearing the opinions of the prosecutor and the defence counsel.

Benefits of virtual hearings

The procedures for conducting virtual hearings do not substantially differ from those for conducting the hearing in person, other than the fact that the parties attend virtual hearings through the use of audiovisual devices connected to the internet. One of the main benefits of virtual hearings is that the parties or their representatives are relieved of travel burdens or difficulties.

Problems with virtual hearings

Some of the concerns regarding virtual hearings include not being able to fully present one's case if there are internet connection issues that cause difficulties in presenting arguments or sharing exhibits. Moreover, there is a risk of a third party intervening in the hearing by providing advice or intimidating the party out of view of the camera.

Implementation of the Online Labor Relations Commission

The Labor Relations Commission has recently introduced an electronic system for their dispute resolution procedures. The Labor Relations Commission is currently in the process of expanding the application of such electronic system to document submissions and virtual examinations. As recently as 2023, as a principle, all documents (eg, complaints, answers and exhibits) had to be delivered via postal or courier services, and parties were required to attend examinations and hearings in person.

However, with the introduction of the electronic system, parties can now file responses and briefs in electronic document format via the Labor Relations Commission's website. Moreover, as of June 2024, the National Commission has begun conducting video hearings for the re-examination of cases under its jurisdiction, and it plans to gradually implement video conferencing systems at the Local Commissions nationwide. Furthermore, the Labor Relations Commission has recently launched the Artificial Intelligence Digital Labor Relations Commission project, which utilises digital technologies, such as artificial intelligence (AI), in dispute resolution processes. Starting from June 2026, digital dispute resolution services, such as online case filing, electronic service of documents and AI-based consultation, are expected to be made available.

Once the AI Digital Labor Relations Commission is fully operational, it is anticipated that the parties will experience increased convenience in all aspects of the dispute resolution procedure, including filing petitions, submitting documents and attending hearings.

9. Dispute Resolution

9.1 Litigation

Class actions in South Korea are different from class actions in common law jurisdictions, where they are initiated by a few plaintiffs who represent a class of individuals, and damages are awarded even to individuals within the class who did not participate in the class action – provided that such individuals were not otherwise excluded.

By contrast, in South Korea, class actions take the form of a “multiparty litigation” in accordance with the Civil Procedures Act, and multiple plaintiffs file a lawsuit as a single “group”. In other words, in South Korean class actions, only the individuals who are named as a party to the litigation are compensated or redressed.

With certain exceptions under Article 87 of the Civil Procedures Act, only lawyers may represent employees before the court.

9.2 Alternative Dispute Resolution

Employment and other related disputes between employers and employees may be resolved privately through arbitrations, mediations and settlements. Moreover, such disputes may also be resolved through arbitrations, mediations and settlements administered by the court and the Local Commission.

Under the principle of private autonomy (ie, freedom of contract), pre-dispute arbitration agreements regarding disputes relating to working conditions, etc, are effective in principle if they are included in the employment contracts. At the same time, labour laws (including the Labor Standards Act) are considered mandatory provisions that cannot be avoided via contracts. Therefore, any agreement that excludes such labour law provisions – or is less favourable to employees compared with labour law provisions – is invalid.

9.3 Costs

Article 98 of the Civil Procedures Act imposes the cost of the lawsuit upon the losing party. As such, the losing party is – in principle – responsible for the litigation fees. Conversely, attorney's fees are divided between the parties in accordance with Article 3 of the Rules on Calculation of the Attorney's Fees.

Trends and Developments

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Lee & Ko was founded in 1977 and is consistently ranked among the largest and most highly respected law firms in Korea by clients, the wider business community and leading legal industry publications. With more than 800 professionals consisting of experienced attorneys from Korea and abroad, advisers, accountants, experts and consultants, Lee & Ko is organised into over 40 specialised practice groups, each of which is highly ranked in its respective prac-

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The Impact of the Yellow Envelope Act

Introduction

Korean employment law has undergone significant evolution in recent years, driven by a push to enhance worker protections amid shifting economic landscapes and labour dynamics. Key trends in 2025 include efforts to reduce working hours, abolish the comprehensive wage system, extend retirement ages, and strengthen family-friendly policies through amendments to the Labor Standards Act and the Equal Employment Opportunity and Work–Family Balance Act. These changes reflect a broader governmental agenda under President Lee Jae-myung to prioritise workers’ rights, including improved maternity and paternity leave, and greater flexibility in work arrangements. However, the most contentious development is the Yellow Envelope Act (also known as the Yellow Envelope Law), an amendment to the Trade Union and Labor Relations Adjustment Act (TULRAA). Reintroduced in July 2025 after previous vetoes, this Act has passed the Legislation and Judiciary Committee on 1 August 2025, and is expected to be enacted imminently, marking a pivotal shift in labour–management relations. This chapter of the guide examines the Act’s provisions, opposition, potential scenarios and outlook, drawing on recent legislative progress and stakeholder reactions.

Background and key provisions of the Yellow Envelope Act

The Yellow Envelope Act, named after the yellow envelopes used by unions to collect funds for legal battles, aims to bolster union protections and address perceived imbalances in labour relations, particularly for subcontracted and non-traditional workers.

The Act introduces several transformative provisions.

Broadened definition of “employer”

The definition includes entities that “substantially and specifically control or determine working conditions”, even without a direct employment contract. This targets principal contractors in subcontracting arrangements. The provision thus obligates principals to negotiate with subcontractor unions, blurring lines between contractors and subcontractors, and exposing principals to liability for labour issues.

Widened scope of industrial disputes

The Act expands disputes to include not just determination but also application, implementation and interpretation of working conditions, covering issues like unpaid wages, wrongful dismissals, restructurings, and management decisions affecting workers. It enables strikes over a wider array of matters, including business transfers or disciplinary actions, potentially leading to more frequent industrial actions.

Limitations on damage claims

The Act prohibits employers from claiming damages if intended to obstruct union activities; exempts unions from liability for unavoidable damages resisting unlawful employer acts; requires proof of individual fault and contribution for any claims, with courts able to reduce awards. It therefore reduces financial risks for unions engaging in strikes, even illegal ones, shifting the burden to employers and encouraging bolder union tactics.

Effect of the changes

These changes are poised to empower unions, as evidenced by the Korean Confederation of Trade Unions (KCTU) launching nationwide strikes in July 2025 to demand the Act’s enactment and resumption of labour–government talks.

Opposition and concerns

The Act has faced vehement opposition from major business groups, including the Korea Enterprises Federation, Korea Chamber of Commerce and Industry (KCCI), and Federation of Korean Industries, as well as foreign chambers like the American Chamber of Commerce in Korea (AMCHAM) and the European Chamber of Commerce in Korea (ECCK). Critics argue it undermines corporate competitiveness by introducing legal uncertainty, particularly around the vague “employer” definition, which could criminalise parent companies or principals. They warn of “industrial paralysis” through an “endless stream of labor disputes”, paralysing sectors like auto manufacturing and shipbuilding that rely on subcontracting. Foreign investors have expressed concerns that the law could deter future investments, threatening employment prospects and exacerbating economic challenges amid global uncertainties.

Possible “extreme” scenarios under the Yellow Envelope Act

The Act’s expansions could enable novel labour strategies, leading to complex disputes. Below are illustrative scenarios highlighting potential risks.

- Scenario 1 – Principal entity A, facing demands from subcontracted entity B’s labour union, agrees to a collective bargaining agreement (CBA) including a 50% salary increase. However, entity A then enforces the original subcontract terms on entity B without additional compensation, expecting entity B to absorb the costs alone. This could trigger disputes between entity A and entity B and expose entity A or B to direct liability under the broadened “employer” definition.
- Scenario 2 – To mitigate liability risks, principal entity A ceases engaging subcontracted entities altogether. This leads to the collapse of thousands of subcontracted businesses dependent on outsourcing, resulting in massive job losses, economic harm and disrupted livelihoods across supply chains.
- Scenario 3 – During a global corporate deal involving company X transferring a Korean business unit to buyer Y, ten unionised employees are set for automatic transfer under Korean law. The union strikes over minor changes in terms/conditions, demanding bonuses for transferees and compensation for remaining employees’ increased workload or reduced job security. The expanded dispute scope could legitimise such actions, delaying the deal.
- Scenario 4 – A company disciplines one union member and offers a modest separation package. The union, viewing this as a precedent harming members’ benefits amid restructuring, strikes for a higher standard package. The Act’s provisions on disputes and limited damages could embolden the union, prolonging the action.

These scenarios underscore the potential for heightened tensions between principals, subcontractors and unions, delaying benefits for workers while increasing operational disruptions.

Outlook: adaptation and strategic responses

The Yellow Envelope Act heralds a period of heightened legal scrutiny, requiring companies to reassess labour strategies and compliance. Case law is expected to evolve over the coming years, clarifying ambiguities, but businesses should avoid becoming precedent-setting cases by seeking institutional knowledge and close legal support. While the Act may spark more disputes – between unions, principals and subcontractors, or subcontractor unions and principals – it could inadvertently delay intended union benefits amid litigation.

Nevertheless, there is room for optimism. Companies have historically adapted to pro-labour reforms, such as the Serious Accidents Punishment Act (SAPA) and the 52-hour workweek limit, through innovative models and compliance frameworks. Legal professionals are actively working on creative and legal strategies to address seemingly unreasonable scenarios under this law, reviewing past practices for guidance on future responses. As with previous changes, it is anticipated that businesses will develop new approaches over time, fostering resilience while awaiting judicial clarity. By focusing on proactive negotiations, documentation and risk mitigation, employers can navigate this landscape effectively.



Law and Practice

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A&O Shearman has an employment practice that stands out for its wide experience and knowledge of employment law, pensions, benefits and incentives. It provides and develops individual and creative solutions to all workplace issues, from working terms and conditions, employee relations and HR policies, to restructuring and dispute resolution. The firm's ap-

proach is very much that of a partnership, working in collaboration with clients to develop individual and creative solutions to their workplace and benefits needs. It is accessible, pragmatic and hands-on, with expertise in communicating directly with workers, employee representatives and regulatory authorities on HR and reward issues.

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1. Employment Terms

1.1 Employee Status

Generally, companies in Spain hire employees through an ordinary employment relationship. There are some distinctions between senior executive employment contracts and ordinary employment relationships.

Executive contracts are regulated under Royal Decree 1382/1985 of 1 August 1985. Executives are defined as managers who exercise powers inherent to the legal ownership of the company and relating to its general purpose, limited only by the decisions and instructions of the person(s) in charge of the company. These employment relationships have fewer regulated rights.

Ordinary employment relationships are regulated under Royal Legislative Decree 2/2015, of 23 October, approving the revised text of the Workers' Statute Act.

1.2 Employment Contracts

There are different types of employment contract in Spain depending on the form, duration and nature of the relationship. Employment relationships may be distinguished by the number of hours worked by the employees (eg, part-time or full-time employment contracts with the same rights).

Form of the Employment Contract

The principle of freedom of form applies to employment contracts, which may be entered into either verbally or in written form. Verbal employment contracts are generally considered to be indefinite.

However, the following employment contracts must be made in writing:

- temporary contracts;
- contracts for employees hired through temporary employment agencies;
- relief contracts to replace partially retired employees (*contratos de relevo*);
- part-time contracts;
- indefinite contracts that may be subject to interruption;
- contracts with employees hired in Spain for Spanish entities operating abroad;

- the transformation of temporary contracts into indefinite contracts;
- contracts for associated assistance (*contrato de auxilio asociado*);
- co-operation contracts; and
- contracts of employees who work remotely.

Duration of the Employment Contract

An employment contract is presumed to last, in general, for an indefinite period. In order to conclude a fixed-term contract, it is necessary to specify precisely the exact and detailed terms of the temporary contract, the specific circumstances that justify it and its connection with the expected duration. Currently, there are only two circumstances where fixed-term contracts are allowed:

- due to production circumstances; or
- in order to temporarily replace an employee.

Temporary contracts due to production circumstances

A fixed-term contract due to production circumstances may not last more than six months (extendable by another six months), and it must be in response to the occasional and unforeseeable variations that generate a temporary imbalance of employment in the company. Contracting for a period determined by circumstances of production would also include contracts for occasional, foreseeable situations of reduced duration and delimited within the fixed contract, duly identified in the contract. They may be used for a total of 90 days, but never consecutively.

Temporary contracts to replace employees

A fixed-term contract to replace an employee may be concluded if the employment of that employee has been suspended with a specific right to be reinstated in their position, to cover the reduced working day for legal or conventional reasons, as well as to fill vacancies during a selection process. In the last of these cases, the duration of the contract shall not exceed three months.

Training contracts

Training contracts now come in two forms.

- A work-linked training contract, the purpose of which is to allow an employee to acquire the appropriate professional competence that corresponds to a certain level of study. It may not have a duration of more than two years. Working hours may not exceed 65% of the normal working hours in the first year and 85% in the second year, with no overtime, shift work or night work. The remuneration will be adapted to the collective bargaining agreement (CBA) and will not be less than the minimum official salary pro rata to the working day, nor less than 60% of that which is set out in the CBA in the first year and 75% in the second year.
- A contract for obtaining professional practice, which may be concluded within three years after obtaining the professional certification in question, and which will have a duration of between six months and one year. The remuneration shall be that provided for in the CBA for the job position, unless specifically provided.

Fixed-term employment becoming indefinite

Employees who, over a period of 24 months, have been contracted for a period of more than 18 months, with or without interruption, for the same or for a different job within the same company or group of companies, through two or more contracts due to production circumstances, either directly or through their provision by temporary employment agencies, will acquire the status of permanent employees. This provision will also apply when a transfer of undertakings occurs in accordance with legal or conventional provisions.

Likewise, a person who has occupied a job, with or without interruption, for more than 18 months in a period of 24 months through contracts due to production circumstances, including secondment contracts entered into with temporary employment agencies, will acquire permanent status.

Formal Requirements

Specific information must be included in a contract of employment, such as:

- the identity of the parties;
- the initial date of the employment relationship;
- the registered office of the company;

- the place of work;
- the applicable CBA;
- the employee's professional group;
- remuneration;
- hours of work;
- probationary period (if any); and
- holiday entitlement.

1.3 Working Hours

Maximum Working Hours and Flexible Arrangements

The weekly maximum working time is 40 hours. However, this maximum may be reduced by an applicable CBA or in an employment contract. As a general rule, daily working time cannot exceed nine hours unless a longer duration is provided for in a CBA.

Currently there is a draft bill through which the Spanish government plans to reduce the standard working week to 37.5 hours. The proposal was recently approved by the Council of Ministers and is expected to come into force during the second half of the year.

Both employers and employees must comply with the minimum rest periods:

- a minimum of 12 hours between working days;
- one and a half days uninterrupted per week;
- 14 bank holidays; and
- 30 calendar days of vacation per year.

Companies may agree with workers' representatives on an irregular distribution of working hours.

Part-Time Employees

Part-time employees cannot work overtime, but they can sign a complementary-hours agreement.

Overtime

Those hours worked over the maximum duration of ordinary working hours shall be considered overtime, which must be compensated with time off or payment in cash.

The number of overtime hours may not exceed 80 per employee in a year. Overtime hours compensated with time off in the subsequent four months do not count

towards the maximum yearly limit, but they shall in any event be considered as overtime.

Certain categories of employees are not permitted to work overtime:

- employees under 18 years of age;
- employees rendering services on a part-time basis;
- employees who are hired to work during night hours;
- employees whose work hours have been reduced due to a decision of the company for economic, technical, organisational or production reasons; and
- employees hired on a trainee contract.

Under Spanish employment law, companies must register the daily working hours of each employee, setting out the start and end times, including overtime. This obligation does not apply to the working hours of senior executives.

1.4 Compensation

A minimum wage is fixed every year by the government, which must be paid in cash. However, applicable CBAs regulate the minimum wage to be paid for each job position in each specific sector, to which increases are applicable each year. As of 2025, the minimum annual wage has been increased 4.4%, being fixed at EUR16,576. Salaries must be paid in 12 monthly instalments, plus two extraordinary payments (in July and December).

1.5 Other Employment Terms

Vacation

Employees are entitled to a minimum of 30 calendar days (22 business days) of vacation per annum. Annual vacations have to be taken within the calendar year and cannot be carried forward unless otherwise agreed with the employer. Vacation cannot be paid in lieu except in the case of termination of employment. The employee's remuneration during the vacation period must be the same as what they are entitled to receive during ordinary working days. In addition, employees are entitled to 14 bank holidays per year.

Other Paid Leave

In addition to the above, employees are also entitled to the following paid leaves (which may be enhanced as per the applicable CBA).

- For the time strictly necessary to undergo prenatal tests and childbirth preparation training and, in the case of adoption, custody for adoption purposes or fostering, for the attendance of information sessions and for undertaking the psychological and social profiling necessary for the declaration of suitability for adoption; provided that these have to be done during the working day.
- In the case of a birth, adoption, custody for adoption purposes or fostering, employees are entitled to one hour (or two half hours) of absence from work per day to breastfeed a child aged less than nine months. Since December 2023, it has been possible to accumulate all the paid hours in assigned to breastfeeding to enjoy them over complete working days. The duration of such leave shall be increased proportionally in cases of multiple childbirth and can be accumulated into full days as long as a collective agreement or the employer allows it. In addition, one of the parents will also be entitled to enjoy this leave as long as the child is aged between nine and 12 months, with a proportional reduction in salary.
- In the case of the birth of a premature child who has to remain hospitalised, the mother or the father shall have the right to be absent from work for one hour per day.
- Five days' absence will be provided for in the case of, accident or serious illness, hospitalisation, or a surgical operation without hospitalisation but requiring home rest.
- Two days' absence (or four days if travel is required) will be provided in case of bereavement.
- Four days of paid leave will be provided to be absent from work due to force majeure when necessary for urgent and unforeseeable family reasons, in the event of illness or accident that makes the employee's immediate presence essential.

Should the employee need to travel due to one of the above-mentioned circumstances, the leave shall be extended by two additional days.

Furthermore, employees are entitled to:

- 15 calendar days in the case of a marriage;
- one day in the case of change of residence;
- the time strictly necessary to comply with an unavoidable duty of a public and personal character;
- the time necessary to perform union or employee representative tasks;
- a reduction of their working hours if they are the victims of gender violence or terrorism, in order to make effective their protection or social assistance; and
- five days in the event of hospitalisation, serious accident, surgical intervention, or home rest of the spouse, registered partner, or relatives up to the second degree of consanguinity.

Maternity leave

Employment for mothers is suspended for 16 weeks due to the birth of a child; this is extended in the case of multiple births by two weeks for each additional child. The first six weeks following the date of birth are compulsory.

Paternity leave

This leave has been gradually increased, and since 1 January 2021, paternity leave is 16 weeks due to the birth of a child, being extended in the case of multiple births by two weeks for each additional child. Employees are obliged to take paternity leave for at least the first six weeks following the date of birth. After those first six weeks, paternity leave can be taken on a part-time basis.

Social security covers maternity and paternity payments up to 100% of the contribution base. Several CBAs oblige companies to supplement the social security allowance up to 100% of the employee's salary.

Parental leave

Employees have the right to enjoy unpaid parental leave to take care of a child up to eight years old. The leave will have a duration of eight weeks, either continuously or not, to be enjoyed in full or part time.

Unpaid leave to take care of children or family members

Employees may take up to three years' unpaid leave from the date of a child's birth, or from the administrative resolution in cases of adoption. Employees may also request unpaid leave, with a maximum duration of two years, to take care of family members who, due to age, accident or illness, cannot care for themselves. In both cases, employees have the right to be reinstated by the company after taking such leave.

Reduction of working hours

Employees with a child aged under 12 or who are responsible for a person with a physical, mental or sensory disability are entitled to a reduction in working hours with a pro rata reduction in salary of between one eighth and one half of the normal duration of the working day. This reduction in working hours constitutes an individual right of any employee.

2. Restrictive Covenants

2.1 Non-Competes

Restrictive covenants are enforceable if certain requirements are met.

A non-competition clause in the course of employment is an employment obligation. No special regulation is needed.

Exclusivity restrictions must be adequately remunerated in order to be enforceable. The law does not make provision as to how much is "adequate" for this purpose.

Post-contractual non-competition restrictions may not exceed two years for technicians and six months for other employees. Post-contractual non-competition restrictions must meet the following requirements:

- there must exist a real industrial and commercial interest in such a restriction; and
- adequate compensation must be provided.

The law does not make provision as to what is adequate for these purposes although, on the basis of case law and depending on how restrictive the cov-

enant is, the compensation should range from 70% to 100% of the employee's fixed salary.

A post-contractual non-competition restriction is deemed to be a bilateral covenant, the waiver of which requires the agreement of both parties.

2.2 Non-Solicits

Non-solicitation of customers is considered to be included within the scope of a non-competition clause.

However, non-solicitation of employees is not regulated in Spain; therefore, this type of clause could raise enforceability issues.

3. Data Privacy

3.1 Data Privacy Law and Employment

Organic Law 3/2018 of 5 December 2018 on the Protection of Personal Data and the Guarantee of Digital Rights sets out a number of specific provisions that apply when processing an employee's personal data.

Surveillance and Recording in the Workplace

Employers may process data collected through camera or video camera surveillance systems to supervise employees, as established by Article 20.3 of the Workers' Statute and by public service legislation, provided that these functions are exercised within their legal framework and within the limits inherent therein.

The Workers' Statute permits an employer to adopt such measures (having regard to the employees' dignity and the capacity of workers with disabilities) to verify that employees are fulfilling their employment obligations. Employers must provide advance, express, clear and concise notification to their employees and, where appropriate, to their representatives about the use of camera surveillance systems.

In the event that the flagrant commission of an unlawful act by an employee has been captured by such a system, the duty to inform shall be understood to have been fulfilled when an information notice has been placed in a suitably visible location, which gives notice of the processing, the identity of the controller and the data subjects' rights. In no case shall the installation of

sound recording or camera/video camera surveillance systems be permitted in places intended for the rest or leisure of employees.

The use of sound recording systems will only be allowed if such use is relevant to the protection of installations, goods and persons in the workplace and adheres to the principles of proportionality and minimum intervention. The data collected in this way must be deleted within a maximum period of one month from its capture, except when it must be kept to prove the commission of acts that threaten the integrity of persons, goods or facilities. In this case, the images and sounds must be made available to the competent authority within 72 hours.

Digital Devices in the Workplace

Employees have the right to protection of their privacy when using digital devices made available to them by their employer. The employer may only access content from such digital media for the purpose of monitoring compliance with work or statutory obligations and maintaining the integrity of such devices. Employers shall establish criteria for the use of digital devices, always respecting the minimum standards for the protection of employees' privacy. The employees' representatives shall participate in establishing such criteria.

The policy around employer's access to the content of digital devices shall precisely specify the authorised use thereof and establish guarantees to preserve the privacy of workers, such as, where appropriate, those periods when the devices may be used for private purposes. Employees shall be informed of the said criteria.

The law requires that companies establish clear policies on device usage with the involvement of employee representatives, as confirmed by recent case law. Furthermore, employer access to digital content must be strictly limited to ensuring device integrity, avoiding invasive practices such as behavioural monitoring or the use of artificial intelligence without proper justification.

The Spanish Data Protection Agency further emphasises that employers must clearly define usage poli-

cies, involve employee representatives, and inform staff explicitly. If personal use is permitted, specific safeguards must be in place to protect privacy and ensure compliance with data protection regulations.

Geolocation Systems in the Workplace

Employers may process data collected through geolocation systems to supervise employees as explained above. The employer must expressly, clearly and unequivocally inform employees and, where appropriate, their representatives about the use of geolocation systems. They shall also inform employees about their right to access and rectify data gathered through geolocation systems and restrictions on the processing and erasure of that data.

The legal basis for geolocation monitoring lies not in employee consent, but in the employment contract and the employer's legitimate right to supervise work performance. However, this right is not unlimited. The use of geolocation must go through a proportionality test, ensuring that the measure is appropriate, necessary and balanced. This means that data collection must be limited to specific, justified purposes and must not result in continuous or excessive surveillance.

Furthermore, employers are required to implement robust security measures to protect the data obtained through geolocation. Employees must also be given the option to disable tracking when using company devices for personal purposes. Transparency and respect for privacy are essential, and both employees and their representatives must be fully informed of the monitoring practices in place.

Whistle-Blowing Systems

Since 2023 employers have been able to process data to facilitate the reporting of cases of misconduct committed within the company or through the actions of third parties. The employees and relevant third parties must be informed of the existence of such systems. Access to the data contained in these systems shall be limited exclusively to those who, whether or not employed by the entity, carry out internal control and compliance functions and are in charge of the processing that may be designated for that purpose. However, access by other persons, even their com-

munication with third parties, shall be lawful when it is necessary for the adoption of disciplinary measures or for the processing of legal proceedings.

Without prejudice to the notification to the competent authority of acts constituting criminal or administrative wrongdoing, it is only when disciplinary measures are to be taken against an employee that access to the systems shall be granted to personnel with managerial and HR functions. Necessary measures must be taken to preserve the anonymity and guarantee the confidentiality of the data relating to the persons affected by the information supplied, in particular the person who brought the facts to the attention of the entity. The data relating to the complainant, and of employees and third parties, shall be kept in the complaints system only for as long as is necessary to decide whether it is appropriate to initiate an investigation into the alleged facts.

Recently, the Spanish government approved the Whistle-Blower Statute, aiming to establish a dedicated, independent authority to safeguard whistle-blowers: *Autoridad Independiente de Protección del Informante* (AAI). The AAI will operate with full legal personality and public-private capacity, structured around a Presidency, a Consultative Commission, and three departments: (i) Whistle-Blower Protection, (ii) Oversight and Sanctions, and (iii) General Management. Its core objectives include ensuring whistle-blower protection, combating fraud and corruption, and co-ordinating with oversight bodies. The authority will issue annual reports to Parliament and may produce special reports on significant cases. Its functions include sanctioning violations and promoting awareness and best practices in whistle-blower management. However, it is explicitly prevented from performing judicial, prosecutorial or police functions and must defer to competent authorities when such bodies are involved.

Data Storage and Removal

The data shall be removed from the system after a period of three months has elapsed, unless it is being kept for evidential purposes. Thereafter, the data may be investigated by the appropriate body. Complaints that have not been dealt with may only be recorded

in anonymised form unless an obligation to block the data applies.

Contact Details

The processing of personal data in the form of the contact data of individuals who work in a legal entity and individual entrepreneurs and freelance professionals shall be assumed (unless proven otherwise) to have a lawful basis, provided that the processing relates only to data necessary for professional purposes and the purpose of the processing is to maintain relations with the legal entity in which the data subject works.

AI Legislation

The new European AI Regulation, approved by the European Parliament on 13 June 2024, and effective as of 1 August 2024, aims to regulate the use of artificial intelligence to mitigate risks to health, safety and fundamental rights, while also safeguarding democracy, the rule of law and the environment. It applies to AI system providers and users operating within the EU, regardless of origin.

The regulation primarily targets high-risk AI systems, particularly those used in human resources for recruitment, candidate evaluation, and employment-related decision-making, due to their potential impact on individuals' career prospects and working conditions.

4. Foreign Workers

4.1 Limitations on Foreign Workers

There are no maximum or minimum hiring quotas for foreign employees.

4.2 Registration Requirements for Foreign Workers

Non-EU citizens require a work and residence permit to work. Simplified procedures apply to specially qualified employees.

EU regulations relating to social security and social security bilateral agreements signed between Spain and other countries must be considered to determine the social security obligations applicable to temporary employees who have been hired by a foreign employer.

As a general rule, any foreign employee rendering services in Spain shall pay into the Spanish social security system unless they are entitled to make contributions in their country of origin, whether under EU regulations or a bilateral agreement on social security matters signed between the country of origin and Spain. In the latter case, a formal communication must be submitted to the labour authorities.

A foreign employee will need to apply for a social security number before the beginning of the contract, which will enable their employer to register them for social security purposes.

5. New Work

5.1 Mobile Work

Law 10/2021 of 9 July 2021 on Remote Working regulates labour relationships that are performed remotely on a regular basis (the work must be performed for at least 30% of the working day over a three-month reference period). This law, along with the Personal Data and Digital Rights Law (3/2018) of 5 December 2018, the Occupational Risk Prevention Law (31/1995) of 8 November 1995 and the General Social Security Law (8/2015) of 30 October 2015, cover issues of data privacy, occupational health and safety, and social security, as they relate to remote work.

The main characteristics of Law 10/2021 are as follows.

- Remote working is voluntary for employees and companies.
- Companies must assume the costs that employees bear to work remotely, and they must provide their employees everything needed to carry out the services.
- Employees have at least the same labour rights as they would have were working on site.
- There are several issues related to this type of work that have to be negotiated with the worker's representatives.
- Companies are required to prevent any form of direct or indirect discrimination against remote workers, not only on the basis of gender, but also of age, seniority, professional group (ie, their posi-

tion/role within the company) or disability. To this end, they must ensure equal treatment, provide necessary support and implement reasonable accommodations.

Data Privacy

Regarding data privacy:

- the employer must inform the employees' representatives of the remote work agreements, without disclosing personal data, and comply with the data protection legislation;
- the remote work agreements must contain the employer's instructions on data protection and information security, taking into account the employees' representatives' opinions;
- remote employees have the right to privacy and data protection, which implies that the employer cannot oblige them to use their own devices or programs, or interfere with their personal use of the employer's devices, in accordance with the law and social customs; and
- employees also have the right to digital disconnection outside their working hours, which the employer must respect and foster through an internal policy and training, with the participation of the employees' representatives.

These rights may be further regulated by collective or company agreements.

Occupational Health and Safety

Regarding occupational health and safety:

- the employer must ensure the health, safety and wellbeing of the remote employees, paying special attention to the following occupational hazards of the home-office:
 - (a) mental health – due to isolation and stress;
 - (b) ergonomic issues – the safety of home-office equipment, such as screens, keyboards and chairs; and
 - (c) organisational risks;
- the employer's responsibility towards the remote employees is limited to the area of the employees' residence designated as the home-office; and
- the employer must carry out home-office risk assessments to help create a healthy and safe

home-office environment, but the employees' consent is required.

Social Security

Regarding social security, the following should be borne in mind.

- The same rules apply to all employees who are part of the Spanish social security system, regardless of their occupation, type and amount of income. The company's reimbursement of expenses derived from the remote work provision (teleworking costs) are not included in the contribution base.
- When the remote work provision involves an international element, the national Social Security Law that governs the employees' affiliation and contribution depends on the location where the teleworking is deemed to take place.

International Telework ("Digital Nomads")

Finally, Law 28/2022 marks a significant step towards adapting the legal framework to the changing realities of the global labour market. As a result, international teleworkers can benefit from various measures such as a new visa category that simplifies the legal requirements and procedures.

5.2 Sabbaticals

Employees can enjoy sabbatical leave (*excedencia voluntaria*) for a period of no more than five years and no less than four months, as long as:

- they have at least one year of seniority in the company; and
- more than four years has elapsed since the end of the any previously taken period of sabbatical leave.

Unless otherwise established by the applicable collective bargaining agreement, no particular reasons need to be provided in order to be granted this type of leave.

The main characteristics of sabbatical leave can be summarised as follows:

- it is unpaid leave;

- during this time, while the employment relationship is not terminated, it is reduced to the bare minimum;
- the time spent on leave does not count for seniority purposes;
- the employee retains a preferential right to re-entry in the event that, from the time when they request re-entry, there is a vacancy in the same (or similar) professional category to the one they held before the sabbatical.

The right to be reinstated will be extinguished if, during the leave of absence, the employee does not request their reinstatement. In addition, once reinstatement has been requested and denied by the employer, the employee does not need to reiterate this request, but the employer is obliged to offer it as soon as the first suitable vacancy arises.

5.3 Other New Manifestations

The organisation of workspaces in Spanish firms has undergone significant changes, driven by remote work and digitalisation. With the reduced need for permanent facilities for their entire staff, firms have adopted flexible spaces that adapt to the needs of each scenario and that promote collaboration and integration among employees.

One of the most common forms of this flexibility is hot-desking, whereby employees do not have a fixed desk, but rather can use any desk that is vacant on the day. In the absence of specific regulation, Spanish case law has confirmed that the firm has the authority to introduce this system, after informing and consulting the employees' representatives, without this constituting a substantial modification of the working conditions.

Another growing tendency is co-working, a practice that involves professionals from various fields sharing office facilities, where they can perform their tasks, establish connections and create opportunities. As of September 2024, there is no existing regulation in Spain that specifically regulates this matter.

6. Collective Relations

6.1 Unions

Unions and their rights are regulated under the Spanish Constitution and the Organic Law 11/1985 of 2 August 1985 on the Freedom of Union Association. Unions have the right to appoint their own representatives at the company concerned.

The two national representative unions in Spain are the *Confederación Sindical de Comisiones Obreras* (CCOO) and *Unión General de Trabajadores* (UGT). However, there are also other representative unions in specific autonomous communities. CCOO and UGT are entitled to represent employees and:

- provide institutional representation before public administration bodies;
- negotiate CBAs;
- determine working conditions with the government;
- participate in non-judicial systems for the resolution of labour disputes;
- promote elections for personnel delegates and company committees and corresponding public administration bodies;
- obtain temporary assignments of the use of public assets under the terms established by law; and
- perform any other representative function established by law.

6.2 Employee Representative Bodies

There is a dual representation system within companies:

- unitary representation, composed of works councils/personal delegates; and
- trade union representation.

It is not compulsory to appoint employees' representatives; rather, it is the right of the employees and the trade unions, who may or may not exercise that right.

Unitary Representation

Unitary representation covers all employees in the workplace or the company. The number and type of employees' representatives depends on the number of staff:

- individual delegates may be appointed in companies or workplaces with more than ten but fewer than 50 employees, or even with six to ten employees if decided by a majority; and
- works councils may be appointed in workplaces with at least 50 employees (the number of members of the works council will depend on the number of employees in the workplace).

Elections for workers' representatives can be promoted by:

- the most representative trade union;
- a trade union with a minimum of 10% of the workers in the company; or
- employees in the workplace (by majority agreement) and following a specific procedure.

Trade Union Representation

Trade unions have the right to designate union delegates where there is a minimum workforce of 250 employees in any company or workplace. The number of union delegates will depend on the number of employees in the company.

With regard to information and consultation rights, union delegates have the right:

- to be informed on a quarterly basis of the company's economic situation and other special matters;
- to be informed at least once a year about the implementation of rights to equal treatment and equal opportunities between men and women and to participate in the negotiation of the equality plan;
- in the event of a transfer of undertaking and the subcontracting of employees, to be informed of:
 - (a) termination documents;
 - (b) serious sanctions imposed;
 - (c) individual terminations;
 - (d) substantial modification of working conditions; and
 - (e) balance sheets, profit and loss accounts, annual reports and other documents provided to the company's shareholders;
- to be informed of and consulted on the situation and structure of employment in the company or workplace, and about the adoption of measures designed to reduce risks at work;

- to issue a non-binding report prior to the company carrying out decisions on:
 - (a) the restructuring of the workforce or when terminations are implemented;
 - (b) reductions in working hours;
 - (c) a total or partial relocation of the company's facilities;
 - (d) a merger process or amendments to the company's legal status; and
 - (e) organisational and work control systems;
- to check that the company is complying with all labour and social security obligations;
- to participate in measures of inspection and control of health and safety; and
- to negotiate collective measures (collective agreements, redundancies, suspension of employment, geographical mobility, substantial amendment of terms and conditions, etc).

Other rights and guarantees of union representatives include:

- the ability to commence an appeal in the event of sanctions due to serious breaches of obligations;
- the possession of seniority over other employees in cases of suspension or termination due to technical or economic reasons;
- not being dismissed or sanctioned during the exercise of their representative tasks or during the year following, provided that the basis for the dismissal or sanction was grounded in the acts of the employee in the exercise of their mandate;
- freedom of speech and the ability to publish and distribute publications on matters of labour and social interest; and
- the right to paid leave to carry out their representative tasks.

6.3 Collective Bargaining Agreements

Statutory CBAs, which carry the force of law, are negotiated by the workers' representatives and the employer. Statutory CBAs are directly applicable to all employees and employers included within their scope, and those employees and employers are bound by them. These agreements regulate minimum salaries, annual working hours, professional groups, probationary periods, holidays and paid leave, and disciplinary measures, among other matters.

There are various types of CBAs.

- Sectoral CBAs negotiated between the most representative unions and the employers' associations. Examples of these include:
 - (a) state and national sectoral agreements;
 - (b) regional sectoral CBAs;
 - (c) provincial sectoral CBAs; and
 - (d) interprovincial sectoral CBAs.
- Company CBAs negotiated between the unitary workers' representatives in the company and the employer; company CBAs have priority over sectoral ones.

7. Termination

7.1 Grounds for Termination

This section is concerned with dismissal based on an employee's serious and wilful non-compliance with their contractual duties. Legal causes for this type of dismissal are explained in **7.3 Dismissal for (Serious) Cause**.

Objective Dismissal

Termination of employment for objective reasons can be based on the following grounds.

- The incompetence of the employee, discovered after recruitment.
- The employee's inability or failure to adjust to reasonable technical changes in their position; however, the employer must have offered the employee a training course aimed at facilitating adaptation to such changes, and termination cannot be considered until at least two months have elapsed since the changes were introduced or the training began.
- A proven objective need to cancel an employment position if there are technical, economic, organisational or production reasons; if a specific number of employees affected is reached, the collective dismissal process will be triggered.

Collective Dismissal

A collective dismissal occurs if a company terminates employment contracts on the basis of economic, technical, organisational or production grounds, and

if, within a period of 90 days, such a measure affects at least:

- ten employees in companies with fewer than 100 employees;
- 10% of the workforce in companies with 100 to 300 employees;
- 30 employees in companies with more than 300 employees; or
- all the employees of the company, provided the number of employees affected is over five and the redundancy is based on the total cessation of the company's activities.

However, according to latest case law, which takes into account European Court of Justice case law, a collective dismissal will also arise where the number of redundancies within a single workplace affects:

- ten or more employees in workplaces with 20 to 100 employees;
- at least 10% of the workforce in workplaces with 100 to 300 employees;
- 30 or more employees in workplaces with more than 300 employees, within a period of 30 days; or
- at least 20 employees within a 90-day period.

Grounds

If dismissal is based on economic grounds, those grounds exist when there are current or foreseeable losses or a persistent decrease in the level of income or sales. A decrease qualifies as persistent if it takes place over three consecutive quarters compared with the same period in the previous year. The performance of a group as a whole is also relevant if the group can be considered to act as a single employer.

The technical grounds that justify dismissal apply when there are changes in the scope, means or instruments of production. Organisational grounds are those which justify the dismissal whenever there is a change in the scope of the working systems or in the way production is structured, among others. Finally, justification may be based on productive grounds whenever there are changes in the demand for the products or services that the company offers to the market.

7.2 Notice Periods

The dismissal process and the notice period involved will differ depending on the status of the dismissed employee(s), the grounds for the termination and the number of employees impacted.

Individual Dismissal

Disciplinary dismissal

See 7.3 Dismissal for (Serious) Cause.

Objective dismissal

The employer must communicate the dismissal to the employee in writing, which should include a detailed description of the grounds. Statutory notice must be served (or longer if contractually agreed). Alternatively, the company may pay the employee a sum of money in lieu of notice. On the date of communication of the dismissal, the employee shall be entitled to statutory compensation equivalent to 20 days' salary per year of service, up to a maximum of 12 months' salary.

Should the termination be based on technical, economic, organisational or production reasons, a copy of the notice of communication must be provided to the employees' representative, if one has been appointed.

Qualification of individual dismissals

The employee may take their case to the labour courts to challenge the grounds or reasons given by the employer for the dismissal or contend that the facts do not justify it. The competent labour court may deem the dismissal as one of the following.

- Fair – the court considers the dismissal justified.
- Unfair – the court considers that the dismissal was not justified.
- Null and void – the court considers that the dismissal was based on grounds that violated the employee's fundamental rights; therefore, the employer must reinstate the employee and pay their salary accrued from the date of termination up to the reinstatement date as well as, possibly, damages.

If the court deems the dismissal unfair, the employer is permitted to do either of the following.

- Reinstate the employee, in which case the employer must pay to the employee their salary accrued from the date of dismissal up to the date of reinstatement. In the case of an objective dismissal, the employee would have to return the severance package made.
- Pay the employee compensation equal to 33 days' salary per year of service (subject to a limit of 24 months' salary) for the period of service accrued as from 12 February 2012 and equal to 45 days' salary per year of service (subject to a limit of 42 months' salary) for the period of service up to 12 February 2012. In the latter case, the resulting severance payment cannot be higher than an amount equal to 720 days' salary unless the amount resulting from the calculations corresponding to the first tranche (ie, the calculation of severance corresponding to the period from the start date to 12 February 2012) is higher, in which case the said amount shall apply but it may not be higher than an amount corresponding to 42 months' salary.

The choice between the two above options will belong to the employee if they are an employee representative.

Collective Dismissal

Process

Royal Decree 608/2023, of 11 July, introduces a new requirement for companies planning to close a workplace where this would entail a collective dismissal of 50 or more employees. The company must notify the competent labour authority and the Ministry of Labour and Social Economy at least six months in advance. This notification must be submitted electronically. If it is not possible to meet the six-month notice period, the company must notify as soon as possible and justify the reasons for the delay. Additionally, a copy of the notification must be sent to the most representative trade unions and to those representing the relevant sector, both at the national level and within the autonomous community where the affected workplace(s) are located.

Collective dismissals can only be implemented following a formal statutory procedure. The main aspects of this procedure are as follows.

- Announcement – the employer must serve notice on the employees' representatives or, in their absence, the employees, stating an intention to initiate a negotiation period to implement a collective dismissal in order for them to appoint a negotiation body. The maximum period for the constitution of the representative committee will be seven days where employees' representatives are appointed or 15 days where no employees' representatives have been appointed.
- Starting the negotiation period – the employer must deliver a written notice to the representative committee to open the negotiating process; a copy of this written notice must also be sent to the appropriate labour authority.

Notice

The written notice must include a report on the grounds for collective dismissal, which must enclose the necessary supporting technical documents as well as a technical report.

If the collective dismissal is based on economic grounds, the documents must evidence economic and financial changes in the company during the last two years and must be duly audited. Whenever the grounds are based on foreseeable losses, the information provided shall include the criteria used for such forecasts. Also, a technical report on the forecast of losses must be provided, based on data extracted from the annual accounts, the sector in which the company operates and the evolution of the market and the position of the company in the same. Special requirements and documentation need to be included if the company forms part of a group of companies.

If the collective dismissal is based on technical, organisational or production grounds, the report must enclose technical reports justifying the dismissal, the measures to be adopted and their impact on the viability of the company.

The written notice must also include:

- the number and professional classification of employees affected;
- the number and professional classification of the employees rendering services during the last year;

- the term envisaged for the implementation of the dismissals;
- the criteria used to designate the affected employees, which must be objective and non-discriminatory;
- a copy of the written notification of the company's intention to start a consultation period to implement a collective dismissal;
- information about the employees who form part of the representative committee; and
- a request from the representative committee of a report on the collective dismissal.

Once the labour authority has received this notice, it will inform the public entity managing unemployment benefits and apply for a compulsory report to be issued by the Labour and Social Security Inspectorate on the content of:

- the communication and the development of the negotiation process; and
- the existence of the specific grounds used by the company to justify the dismissal.

Negotiations

The employer must hold negotiations with the representative committee within a maximum of 30 days, or 15 days in case of companies with fewer than 50 employees. The negotiations must include possible options to avoid the collective dismissal, reduce the number of employees affected or ameliorate its consequences, as well as on the severance packages to be paid. A minimum number of mandatory meetings must be held, and a calendar followed unless otherwise agreed.

The parties must negotiate in good faith. The labour authority will safeguard the effectiveness of the negotiation period and is entitled, if appropriate, to send recommendations and warnings, but these will not stop or suspend the procedure.

The negotiation period will be concluded whether or not an agreement between the parties is reached. If sufficient grounds exist, the employer can unilaterally execute the terminations.

After the consultation period has ended, the company shall communicate to those employees who were part of the negotiation committee and to the labour authority the decision on collective dismissal. This communication should be made within a maximum period of 15 days from the last meeting held in the consultation period. The company must also communicate notice of dismissal individually to each of the affected employees. The individual communication must follow the formal procedure for individual objective dismissals.

Severance

The statutory payment in case of collective redundancy is 20 days' salary per year of service up to a maximum of 12 months' salary. The final amount of severance is negotiated during the consultancy period, which is usually increased by companies in order to reduce the risk of litigation.

Other obligations to be included in the social plan

Out-placement programmes must be provided for a minimum of six months if the collective redundancy affects more than 50 employees.

Special social security contributions will be made for employees in the case of employees aged 55 years or above who did not make social security contributions prior to 1 January 1967 and who are included in a collective dismissal process that is not based on an insolvency. The employer must pay their contributions until they reach the age of 61 (in the case of economic grounds) or 63 (in the case of organisational, productive or technical grounds). The application of the special agreement must be made during the collective dismissal procedure.

An additional contribution to the Public Treasury must be paid by companies which make profits and carry out a collective dismissal that affects employees aged 50 or above.

Qualification of collective dismissal

Collective dismissals can be challenged collectively by workers' representatives on the basis that:

- the grounds argued by the company to justify the dismissals do not exist;

- the formal process has not been followed; or
- the decision has been reached after wilful coercion, fraud or abuse of law.

Normally, the workers' representatives only launch a claim against collective dismissal if the negotiation period concludes without an agreement.

The subsequent judgment may render the company's decision as one of the following.

- Fair – where the company has complied with the legal procedure and has evinced the existence of the grounds for the dismissal.
- Not according to law – when the company has not proved the grounds justifying the dismissal, in which case the employer will have to pay to the affected employees the same compensation that would apply in the case of unfair individual dismissals.
- Null and void – this applies (i) when the legal process has not been followed, or (ii) when the company's decision was taken in breach of fundamental rights or public liberties, or (iii) in cases of wilful coercion, fraud or abuse of law. In this case the employer must reinstate the affected employees and pay them the salaries accrued from the date of termination up to the reinstatement date.

Termination of Top Executive Contracts

Top executives' contracts, regulated by Royal Decree 1382/1985 of 1 August 1985, may be terminated as set out below.

Termination by the employer

The employer can terminate a top executive contract at any time without giving any reason. The company must deliver to the employee a termination letter stating the date of the termination, serve three months' notice (or a longer notice if contractually agreed) or make payment in lieu of salary. The employee is entitled to the compensation agreed in the employment contract or, in its absence, the legal compensation of seven days' salary per year of service subject to a limit of six months' salary.

The employer can terminate a top executive contract for a serious breach of their contractual duties. The

company must deliver to the employee a dismissal letter, which should include a detailed description of its reasons and the date of termination, which may be immediate. Should the employee challenge the dismissal, and where the labour court subsequently rules that it was unfair, the company will have to pay them severance equal to 20 days' salary in cash per year of service up to a limit of 12 months' salary.

In the case of objective dismissal, the same procedure applicable to ordinary employees shall apply.

Termination by a top executive with severance entitlement

Top executives are entitled to terminate their contract at will with the right to receive:

- the severance agreed in their contracts, if any; or
- in the absence of contractually agreed severance, severance pay equal to seven days' salary (in cash) per year of service subject to a limit of six months' salary in the case of:
 - (a) a substantial change to the executive's employment terms and conditions which resulted in damage to the executive's professional training or dignity (decided by the employer in a serious breach of contractual good faith);
 - (b) lack of payment or repeated delay in the payment of the remuneration agreed;
 - (c) any other serious breach of contractual duties by the employer; or
 - (d) a transfer of undertaking or relevant change in the ownership of the company, which involved the restructuring of senior executive positions, provided that the top executive exercises their right to terminate within three months following the transfer.

A top executive may have to serve the employer with three months' notice (or a longer period if agreed in their employment contract). Should this not be served, the employer will be entitled to be paid the salaries corresponding to the period in lieu of notice.

Statutory Severance of Temporary Contracts

Upon the termination of a temporary contract, due to the expiry of the time agreed or completion of the work or service subject to the temporary contract, employ-

ees are entitled to a severance payment equivalent to 12 days of salary per year of service (except in cases of replacement and training contracts).

7.3 Dismissal for (Serious) Cause

This type of dismissal is based on an employee's serious and wilful non-compliance with their contractual duties. Legal causes for dismissal must be proven by the employer and include the following:

- unjustified repeated absence or lack of punctuality;
- lack of discipline or disobedience;
- verbal or physical offences against the employer or other people who work in the company or to their relatives who live with them;
- breach of good faith or betrayal of trust;
- continued and wilful unsatisfactory performance;
- habitual drunkenness or drug addiction affecting work performance; and
- harassment on grounds of racial or ethnic origin, religion or belief, disability, age, sexual orientation and sexual or gender-based harassment of the employer or persons working in the company.

Additional causes may be set out in applicable CBAs or individual employment agreements.

Unless further requirements are set out in an applicable CBA or an employment contract, the company shall terminate the employee concerned by way of a written letter of dismissal stating the date on which the termination takes effect as well as the grounds for dismissal. This type of dismissal will not entitle the employee to statutory severance pay.

However, recent case law from the Spanish Supreme Court now requires that, prior to issuing a disciplinary dismissal letter, companies must formally initiate a disciplinary proceeding by delivering a written notification detailing the alleged misconduct. The employee must be granted a reasonable period to submit a response to these written allegations. Only once this period has elapsed and the employee's response (if any) has been received and considered, may the employer decide to proceed with the dismissal and issue the termination letter. Failure to follow this procedure may result in the dismissal being declared unfair or even null and void. Should the employee be

an employee legal representative or a union delegate, an adversarial proceeding shall be opened in which the affected employee and works council shall be heard. Should the employee be affiliated to a union, and if the employer is aware of that, it must give a prior hearing to the union delegates.

Disciplinary dismissal is the most serious sanction that a company may impose on an employee and is subject to a statute of limitation of 60 days, as from the date on which the breaches became known to the employer or six months from the date on which the breaches took place.

7.4 Termination Agreements

An employment relationship can be terminated by mutual agreement between the employer and the employee. The advantage of this route is that the parties are free to agree the terms and conditions of the termination unconstrained by statutory compensation. The drawback is that the employee shall not be entitled to collect unemployment benefits and the tax treatment of any compensation agreed will be impacted.

Apart from the above, when a company follows the dismissal route and the employee challenges the termination before the conciliation authorities or a labour court, the parties will have the chance to settle the case and avoid further disputes. For such purposes, the employee must file a conciliation claim within a maximum period of 20 working days from the effective date of termination. Thereafter, the parties shall attend a hearing in which they will have the opportunity to settle the dismissal.

Upon completion of the conciliation process, the officials will issue the relevant minutes of the hearing. Should the conciliation process end without an agreement, the employer will have to submit the relevant judicial claim before the labour courts if it wants to pursue its claim, and the court will have to admit the claim and schedule a judicial conciliation hearing and trial. Nevertheless, the parties will have an opportunity to reach an agreement before judgment is issued.

7.5 Protected Categories of Employee

Certain groups of employees are especially protected from dismissal. These include:

- pregnant employees and employees during the 12 months that follow them giving birth;
- employees on reduced hours of work to take care of a child or a disabled person;
- employees in maternity/paternity during the period of suspension of their employment contract;
- employees who are victims of domestic violence;
- employees' representatives;
- data protection delegates; and
- employees who have filed and won a claim against the company.

Courts are very protective towards these employees, and dismissals affecting them are presumed to be contrary to their fundamental rights unless otherwise evidenced by the company. If the employer is unable to provide objective criteria and adduce strong and sound evidence to justify termination, the dismissal will be rendered null and void. This will entail an obligation on the part of the employer to reinstate the employee so affected and pay to them a procedural salary (ie, the salary accrued from the date of termination up to the reinstatement date).

8. Disputes

8.1 Wrongful Dismissal

See 7.2 Notice Periods.

8.2 Anti-Discrimination

It is unlawful to directly or indirectly discriminate against employees or potential employees on the grounds of sex, marital status, age, race, ethnic or racial origin, social status, religious or political beliefs, sexual orientation or identity, trade union membership, language or disability, or against employees who have familial relationships with the employer.

Filing Claims

Employees who believe that they have been discriminated against may file a claim against such discriminatory treatment and be awarded compensatory damages. The burden of proof lies with the employer,

which should objectively and sufficiently demonstrate that the decision was not based on discriminatory grounds. If the court finds evidence of discrimination, the judgment may provide for compensation and nullify the company's discriminatory action, order the immediate cessation of the discriminatory action and order the reinstatement of the employee under the same conditions that applied prior to the episode of discrimination. If an employee's termination of employment is nullified, the employee will be reinstated to their role and be paid the salary accrued – but not paid – from the termination date for the length of the judicial process.

The prejudicial treatment of employees on the basis that they requested that their rights be upheld or have reported anomalies within the company is not permitted. Any sort of claim (which need not be a judicial claim) may be sufficient to argue the existence of retaliation, even if done through an informal procedure. Dismissals and any other detrimental employment measures adopted on the basis of retaliation shall be null and void. The affected employee can also claim for damages.

In cases of discrimination, the company may be sanctioned with:

- a penalty of between EUR7,501 and EUR225,018;
- the automatic loss (proportional to the number of employees affected) of subsidies, rebates or bonuses or any state benefit granted in the context of employment programmes; and
- loss of access to the above-mentioned subsidies, rebates or benefits for a period of six months to two years.

Legislation on Gender and Sexual Equality

The Spanish government has approved two Royal Decrees related to equality between men and women in companies.

- Royal Decree 901/2020, of 13 October 2020, which regulates equality plans and the obligation to register them. This Royal Decree entered into force on 14 January 2021, with the aim of promoting effective equality between men and women, eliminating any discrimination that may exist, through

the obligation to develop and apply an equality plan in those companies that employ more than 50 employees. The equality plan has to be negotiated with the workers' representatives and will consist of three phases:

- (a) diagnosis of the company situation;
- (b) preparation of an equality plan; and
- (c) monitoring, evaluation and review of the equality plan.

- Royal Decree 902/2020, of 13 October 2020, on equal pay between women and men. This Royal Decree entered into force on 14 April 2021, with the aim that equal salaries will be paid for jobs of equal value, without any discrimination based on gender. By virtue of this Royal Decree, employers must keep a record with the average values of salaries, salary supplements and extra-salary payments of their workforce, disaggregated by gender and distributed by professional groups, professional categories or jobs with equal value. Workers may access this registry through their legal representatives, or directly if they do not have legal representation.

In addition to the above, the Spanish government has approved Law 4/2023, which implied the obligation of companies with more than 50 employees to implement a protocol to act against any type of harassment or violence towards the LGBT+ community. The effective date for the implementation of the LGBT+ plan was 2 March 2024, and the conditions must be negotiated with the legal representatives of the employees.

8.3 Digitalisation

Article 230 of the Organic Law of the Judiciary had a general rule that courts and tribunals should use any available technology to do their work and exercise their functions. However, the COVID-19 pandemic made it necessary to adopt more specific measures for this purpose.

Law 3/2020 of 18 September 2020 established that, whenever possible, courts and tribunals should use electronic means to carry out trials, hearings, statements, and other procedural acts. However, this law applied only as long as there was a health crisis scenario in Spain, and it ceased to be in force on 4 July 2023 with the publication of Order SND/726/2023,

which contained the Agreement of the Council of Ministers declaring the end of the health crisis situation caused by COVID-19.

9. Dispute Resolution

9.1 Litigation

Judicial proceedings related to employment deal with several areas of conflict. These include ordinary dismissals, collective conflicts, the breach of fundamental rights, holidays, workers' representative elections, professional classifications, amendment of working conditions, geographical mobility and social security.

Depending on the geographical scope of the claim and/or the number of employees impacted, different competent courts deal with the matters raised.

- Labour courts of first and unique instance – these courts resolve individual and social security claims.
- Superior courts (one per autonomous community) – these courts resolve appeals filed against judgments of the labour courts as well as certain collective conflicts in the first instance phase.
- National Audience – this Audience hears, at first instance, collective conflicts that affect employees based in more than one autonomous community.
- Supreme Court – the Supreme Court resolves appeals filed against judgments of the superior courts and the National Audience, and even judgments issued by the Supreme Court at first instance.

Prior to the filing of a judicial claim, there is a general requirement to file a claim for conciliation (some matters are excluded from this preliminary conciliation hearing).

9.2 Alternative Dispute Resolution

Collective matters are subject to a compulsory mediation process. If that ends without agreement, the parties may expressly agree to submit the collective case to arbitration as an alternative to the judicial process.

Pre-dispute arbitration agreements are not enforceable in Spain.

9.3 Costs

Under Spanish employment law, employees are beneficiaries of so-called “free justice”; they are entitled to an appointed lawyer, free of charge. In view of this, there can be no award of legal fees.

A judgment may impose costs on the prevailing party in an appeal, except where the party enjoys the benefit of free justice or in the case of unions or public officials or statutory personnel. Such costs shall include the fees of the lawyer of the opposing party that had acted in the appeal with a maximum of EUR1,200 in the appeal phase before the superior court and EUR1,800 in the appeal phase before the Supreme Court.

The above does not apply in cases involving collective conflict; each party is responsible for its own costs. However, the court may impose the payment of costs on any party that has acted with recklessness or bad faith.

Trends and Developments

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Eversheds Sutherland Spain offers its clients a full range of legal services with a commitment to quality and adapted to the needs of each sector. The firm works with the most demanding technical standards, is proactive and efficient, and is committed to the objectives of its clients. The employment department at Eversheds Sutherland Spain is among the largest and most prestigious in the business with more than 15 lawyers. Recognised by leading legal directories, the department is led by Jacobo Martínez, the man-

aging and founding partner who has around 20 years of experience, and who can draw on a strong team of expert lawyers. The team has broad experience advising leading multinationals on, inter alia, the implementation of complex remuneration systems, the labour implications of purchasing processes, mergers and other constitutive operations of company succession, restructurings, record of temporary employment regulation, collective dismissal proceeding, and the hiring and dismissal of senior management.

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Employment Law in Spain 2025: Inspection Priorities, Shifts in Judicial Thinking and Emerging Obligations

Spain's employment environment is undergoing a period of sustained transformation. While the core legal framework remains structurally stable, its interpretation and enforcement are becoming markedly more stringent, driven by ongoing legislative reforms, dynamic case law, and an increasingly assertive compliance culture. Simultaneously, political uncertainty is influencing the feasibility of various legislative initiatives, with labour issues featuring prominently on the agendas of both the government and trade unions.

For companies operating in Spain, whether directly or through subsidiaries or affiliates, this is a pivotal moment to reassess their exposure to employment-related risks. The pressure to implement preventive, well-documented, and procedurally sound practices continues to mount.

What follows is a concise and structured overview of the key developments shaping the Spanish employment landscape in 2025.

Labour inspections intensify: data-driven enforcement and sectoral targeting

Since 2023, the Spanish Labour Inspectorate has shifted towards a more strategic, intelligence-led enforcement model. Traditional on-site inspections are now complemented by systematic data analysis, enabling authorities to identify patterns and anomalies in areas such as contract types, contribution histories, time records and sector-specific wage benchmarks.

Audits have been especially frequent in sectors where irregular work structures have historically been tolerated. Logistics, hospitality, care services, and subcontracted labour remain under close scrutiny. However, targeted inspections are also expanding to include professional services, education and technology companies.

Inspectors are particularly focused on the systematic use of temporary and part-time contracts. When such contracts are repeatedly renewed or appear to circumvent indefinite employment obligations, there is a growing presumption of abuse. In numerous cases, these arrangements are being reclassified as indefinite contracts, often with retroactive effect. Employers may thus face liabilities including unpaid social security contributions, surcharges and administrative penalties per affected employee.

A similar trend is evident in relation to the misclassification of employment relationships. Where service providers operate under close direction, use company infrastructure or lack commercial autonomy, labour inspectors increasingly presume an employment link. This has become particularly relevant in technology-adjacent roles, the creative industries and outsourced business services.

Daily time tracking remains another key focus. Although the obligation has been in place since 2019, non-compliance rates remain high. Many employers rely on outdated systems, informal declarations or unreliable tracking methods. Inspectors are now verifying not only the existence of such records, but their integrity and functionality. Deficiencies may be

interpreted as indirect evidence of undeclared overtime or breach of collective agreements, with potential consequences including sanctions, back-pay claims and the doubts as to the legal robustness of future dismissals or restructurings.

Proposed working time reduction and emerging enforcement mechanisms under debate

The Spanish government has put forward a proposal to gradually reduce the statutory working week from 40 to 37.5 hours, without any corresponding reduction in pay. The reform is structured in two phases: an initial cut to 38.5 hours, followed by a final reduction to 37.5 hours, to be applied universally across sectors and companies, unless a more favourable arrangement is established by a relevant collective agreement.

This initiative is part of the coalition government's broader social agenda. However, its parliamentary passage is far from assured. With no stable majority in Congress, the reform's approval hinges on negotiations with coalition partners and other parliamentary groups. As such, delays, amendments or even the proposal's ultimate rejection all remain possible.

Despite this legislative uncertainty, the political momentum is already influencing collective bargaining. In several sectors, reductions in working hours are being negotiated independently of the proposed law. Employers should be aware that the public debate may shape employee expectations and collective demands, irrespective of the reform's legal status.

The draft legislation also introduces two noteworthy enforcement innovations. First, it envisages the creation of a national digital platform for real-time recording and transmission of employees' working hours to the labour authority. This would eliminate the current possibility of maintaining internal or decentralised records. Second, the proposal would modify the sanctioning regime: infractions related to working time, such as failure to track hours or exceeding limits, would be penalised per affected employee, rather than as a single company-wide offence. This could significantly increase the potential financial cost of non-compliance.

Although these measures are not yet in force and may be subject to legislative revisions, they clearly reflect a paradigm shift in enforcement policy. Employers should proactively evaluate their time-tracking systems, ensure full traceability, and prepare for the potential centralisation of compliance monitoring.

Dismissal after permanent incapacity requires documented adaptation efforts

One of the areas where judicial interpretation has undergone the most significant transformation in the treatment of employees concerns the dismissal of employees declared permanently unfit for their original roles. Such a determination typically follows prolonged illness or injury and leads to the recognition of permanent disability status by the Spanish social security system or a mutual insurance entity.

Historically, employers often treated the formal declaration of permanent incapacity as sufficient justification for contract termination. This view no longer holds legal ground. Courts now demand that employers undertake a comprehensive, case-specific assessment prior to dismissal. This includes evaluating whether the position can be reasonably adapted, through modifications in tasks, equipment, schedules or workplace conditions, or, where appropriate, offering reassignment to an alternative position compatible with the employee's abilities.

These efforts must be documented, individualised and demonstrably reasonable. Vague assertions that adaptation is "not feasible" are inadequate. Where a suitable role exists within the organisation and the employer fails to consider or offer it, the dismissal may be deemed null and void on grounds of discrimination based on disability. Such a ruling entails serious legal consequences, including reinstatement, full back pay and, in some cases, compensation for moral damages.

Importantly, this duty applies regardless of whether the employee is already receiving a disability pension, or the incapacity has been officially recognised. What matters is whether the employer made a good-faith effort to preserve the employment relationship. Companies should handle such cases with heightened diligence, ensuring that all reasonable paths to

accommodation are thoroughly explored before contemplating termination.

LGTBI equality plans are now mandatory and regulated in detail

Companies with 50 or more employees are now legally required to adopt an “LGTBI equality plan”, pursuant to Royal Decree 1026/2024, which implements the 2023 Law on Equal Treatment and Non-Discrimination of LGTBI Persons. This regulatory development marks a significant advancement; embedding diversity and inclusion within the broader framework of employers’ compliance obligations.

The plan must be negotiated with employee representatives through a participatory process. It must be adapted to the specific characteristics of the organisation and contain concrete, actionable measures. At a minimum, it must include protocols for the prevention and management of harassment or violence on the grounds of sexual orientation or gender identity. It should also incorporate inclusive recruitment and promotion practices, awareness-raising actions, and the designation of a person responsible for implementation and oversight.

Non-compliance may trigger substantial administrative sanctions, including fines of up to EUR225,000. Additionally, companies that fail to comply may be barred from participating in public procurement processes and from accessing certain types of public funding. The Labour Inspectorate has already begun requesting evidence of implementation during inspections.

Although the content of each plan will necessarily vary depending on the company’s size and sector, it cannot be reduced to a symbolic gesture. It must be integrated into internal policies, reflected in onboarding and training procedures, and aligned with existing equality and diversity strategies. The obligation to negotiate and document the plan closely mirrors the existing framework for gender equality plans, and companies would be well advised to apply a similarly rigorous approach.

Prior hearing now required before disciplinary dismissal

In a landmark decision issued in November 2024, the Spanish Supreme Court established a mandatory procedural safeguard in disciplinary dismissals: employers must grant employees a prior hearing before formal notification of termination. This entails informing the employee of the specific factual allegations and providing then with a meaningful opportunity to respond or offer clarifications.

The hearing does not need to follow a formal structure or involve legal representation. However, it must be genuine, timely and adequately documented. Courts will assess whether the employee was afforded a real chance to be heard and whether the employer duly considered their response before reaching a final decision.

Failure to comply with this requirement renders the dismissal automatically unfair, regardless of the seriousness of the underlying misconduct. This judicial stance aligns Spanish labour law with international standards, notably Article 7 of ILO Convention No 158, ratified by Spain.

Companies should promptly review and revise their internal disciplinary procedures to integrate this hearing requirement. Standard templates for dismissal notices and internal HR protocols must be updated to ensure legal compliance.

No additional compensation beyond statutory unfair dismissal awards

In December 2024, the Spanish Supreme Court issued a final judgment definitively rejecting the possibility of awarding additional compensation in unfair dismissal cases that exceeds the statutory formula established in the Workers’ Statute (*Estatuto de los Trabajadores*). The Court held that, unless the dismissal violates a fundamental right or constitutes unlawful discrimination, the capped statutory indemnity is both sufficient and exhaustive.

This ruling ends a period of judicial uncertainty during which some lower courts had allowed claims for supplementary damages based on alleged insufficient reparation. These claims often invoked the European

Social Charter or international instruments like ILO Convention No 158. The Supreme Court clarified that such provisions lack direct effect in Spanish law and cannot override statutory limits.

Subsequently, on 19 July 2025, the Plenary of the Labour Chamber (*Sala de lo Social*) further confirmed that courts have no authority to increase compensation in unfair dismissal cases, even in light of exceptional personal circumstances. The Chamber emphasised that this does not infringe Article 10 of ILO Convention No 158 or Article 24 of the European Social Charter, as both only require that compensation be “adequate,” without mandating specific amounts or methods.

In its reasoning, the Supreme Court has stated that:

- the “right to adequate compensation” is too vague – these are not directly enforceable mandates, but rather programmatic declarations that require legislative development; and
- the current fixed compensation system applicable is indeed adequate, as it ensures uniformity and legal certainty for all employees.

While this ruling reinforces uniformity and predictability, removing the risk of courts awarding higher compensation, it also leaves open the possibility of future legislative reform that could raise severance amounts significantly.

The company may unilaterally approve the equality plan in the case of a negotiation impasse, and administrative silence is applicable to equality plans

Unilateral approval/registration

The Supreme Court Judgment No 545/2024, of 11 April, addressed two key issues concerning the development and registration of equality plans (*planes de igualdad*).

As a first point, the Court held that when a company lacks employee representatives, it must initiate negotiations with the most representative trade unions in the relevant sector. However, if those unions either fail to respond or merely ask the company to “try again

later,” the company is entitled to unilaterally draft and submit its equality plan for registration.

Historically, equality plans submitted without genuine negotiation were often rejected in REGCON (the register or equality plans), and in some cases, the company faced sanctions. The April 2024 ruling clarified that if an employer can demonstrate that it has made repeated and unsuccessful efforts to engage with the unions, unilateral drafting and registration of the plan is permissible.

Administrative silence

Subsequently, on 20 November 2024, the Supreme Court issued multiple judgments reaffirming this position. In particular, in Judgment No 1295/2024 (Rec. No 63/2024), the Court reiterated the validity of unilateral registration in the event of a negotiation impasse, and further addressed the second key issue: the applicability of administrative silence in equality plan procedures.

Specifically, the Court confirmed that when the competent public administration fails to respond within the legal three-month period, the equality plan shall be deemed automatically registered under the principle of positive administrative silence (*silencio administrativo positivo*).

Significantly, in this judgment a reference is made to the earlier ruling of 11 April 2024, affirming that as established in that ruling, “in situations such as the one at hand, positive administrative silence is applicable”.

This doctrinal alignment now provides clear guidance for companies facing union inaction or administrative delays in the equality plan process, offering a path forward that combines procedural diligence with legal certainty.

Union leave time (crédito horario) must be justified.

In its judgment of 11 June 2024, the Spanish Supreme Court ruled that an employer does not violate trade union freedom by requesting a general justification for the use of union leave time and rejecting to pay for time on leave that has not been so justified.

The Court ruled in favour of the company, holding that it does not constitute a violation of trade union freedom for a company to request general justification regarding the use of union leave time, such as attendance at meetings, training activities or trade union congresses, and to withhold payment for hours that are not reasonably justified.

The Court confirmed that companies may require employee representatives or trade unions to indicate the general purpose of the leave (eg, meetings, training or union visits), without needing to disclose specific details. While unions retain discretion over the content of their activities, they must provide enough information to justify the use of paid leave.

This decision clarifies that employers may exercise control over union leave usage without infringing union rights, provided their requests remain within reasonable and general limits.

Remote working agreements and invalid clauses

In its judgment of 26 June 2024, the Spanish Supreme Court assessed several standard clauses in remote working agreements and declared some of them null for contravening key labour law principles. The Court emphasised that employers cannot retain a unilateral right to modify essential working conditions, especially when clauses are ambiguously worded or based solely on business needs.

The Court invalidated the following clauses:

- *A clause granting the line manager the authority to determine the working time schedule remotely based on the Company's needs* – The Supreme Court states that, since it leaves the decision solely to one of the parties to the agreement, the manager or the company cannot unilaterally change the percentage of on-site work entirely or the working time schedule.
- *A clause on technical issues or incidents preventing remote work* – The period during which remote employees cannot perform their duties due to IT breakdowns or similar incidents cannot be considered as resting time because the employee cannot work because of issues that are the responsibility of the company, and they do not have the oppor-

tunity to leave the work environment or freely use that time for leisure. Therefore, this time must be considered as working time. If services cannot be provided for reasons that are not attributable to the employee, he or she does not lose their right to remuneration.

- *A clause on the percentage of and distribution between on-site and remote work* – This duty must be fulfilled concretely: generic wording is not acceptable. The Supreme Court explains that the contract must specify in a clear and precise way the percentage and distribution of on-site and remote work specifying each one of them.

In a follow-up ruling in April 2025, the Court reaffirmed that the right to have expenses reimbursed is directly enforceable under the Remote Work Law (LTD), regardless of whether a collective agreement has detailed the procedure. While collective bargaining may regulate specifics, it cannot eliminate the right itself, which is granted by statute.

Finally, the Court invalidated clauses that restrict an employee's ability to return to on-site work or exclude compensation if the company unilaterally revokes the remote arrangement. These were deemed incompatible with the LTD, as they unjustifiably waive rights and breach the principle of reciprocity.

Pay transparency register

In its judgment of 21 November 2024, the Supreme Court clarified that Article 28.2 of the Workers' Statute does not impose an obligation to include individually identifiable salary data in the pay register.

The Court ruled in favour of the company, stating that "there is no legal provision that clearly requires" such disclosure.

Furthermore, the Court added that any such obligation must stem from explicit legislation and be subject to appropriate data protection safeguards under the EU's GDPR and Spain's national data protection and privacy legislation (LOPDGDD).

Travel time to clients and effective working time

The Spanish Supreme Court, in a ruling from 27 November 2024 has once again addressed the issue

of whether time spent by employees travelling from their home to the first client and from the last client back home qualifies as effective working time.

The Court reiterates that the case law of the Court of Justice of the European Union (CJEU), particularly the Tyco judgment, is not automatically applicable to all situations because such judgement was ruled taking into account the special situations of the case. Where the specific conditions established in Tyco are not met, such travel time must be carefully analysed, assessing, among other things, the employee's freedom to carry out other activities during the trip and/or whether the employee is at disposal of the company during this trip. Depending on these situations, the travelling time could be considered (or not) effective working time.

The Tyco judgment, CJEU, 10 September 2015, Case C-266/14, defined "working time" under Article 2 (1) of Directive 2003/88/EC by identifying three cumulative criteria:

- the employee must carry out their activity or duties;
- the employee must be at the employer's disposal during that time; and
- the employee must remain at work throughout the period in question.

In that case, the Court stated that, where these conditions are not satisfied, domestic law applies. Specifically, Article 34.5 of the Spanish Workers' Statute, which provides that working time shall be computed from the starting to the end of the working day at the employee's place of work.

In the case at hand, the Supreme Court held that the travel time in question could not be considered effective working time for all legal purposes (eg, remuneration, overtime), based on the following considerations, which are different from the Tyco case:

- The company had neither closed its regional offices nor reassigned all employees to centralised headquarters. Therefore, the factual scenario did not reflect the circumstances of the Tyco case, nor those addressed in prior Supreme Court judgments

(Judgment 605/2020, of 7 July; and Judgment 617/2021, of 9 June).

- There was no evidence that employees were required to travel distances of up to 100 kilometres.
- No discriminatory treatment was found among employees in comparable situations lacking objective and proportionate justification.
- The company had not altered the manner in which services were rendered, and had consistently excluded travel time from local offices to client sites (and return) from being treated as working time.

Accordingly, the Court reaffirmed the legal doctrine previously established in its judgments of 1 December 2015 (Case 284/2014) and 4 December 2018 (Case 188/2017), concluding that the Tyco's special circumstances were not fulfilled.

Consequently, national law applies. Under Article 34.5 of the Workers' Statute, the working day is deemed to commence upon the employee's arrival at the designated workplace, thereby excluding home-to-client and client-to-home travel for remuneration purposes. However, this ruling should not be automatically extrapolated to other cases and an analysis of the specific circumstances of each case must be carried out.

Extension of maternity/paternity leave

Royal Decree-Law 9/2025 enacted on July 29th has extended maternity/paternity leave, aiming to guarantee equality, shared responsibility, and the protection of maternity, in order to adapt these rights to new family structures and to comply with European regulations in this area.

The duration of maternity leave (referred to as leave for birth and care) will be 19 weeks for the biological mother (instead of 16 weeks as ruled under the former legislation). In the case of single-parent families, the leave is extended to 32 weeks.

Such leave can be taken as follows:

- Six weeks are mandatory and must be taken immediately after childbirth, on a full-time basis.

- The following 11 weeks (22 in the case of single-parent families) can be distributed at the mother's discretion, in weekly periods, either consecutively or intermittently, and can be taken from the end of the mandatory rest period until the child turns 12 months old.
- An additional two weeks (four in the case of single-parent families) can be taken for child care, distributed in weekly periods, either consecutively or intermittently, until the child turns eight years old.

The extension of the two weeks for parental care (four in the case of single-parent families) applies to events occurring from 2 August 2024, although this right may be requested from 1 January 2026.

In addition, the law states the following points regarding the nature of this right and special circumstances:

- the maternity/paternity right is individual, equal and non-transferable;

- the leave can be taken on a full-time or part-time basis, subject to agreement with the employer;
- the leave is extended by two additional weeks for both parents in the case of a child's disability, and by one additional week for each child from the second onwards in cases of multiple births;
- in cases of premature birth or neonatal hospitalisation, the leave can be extended by up to a maximum of 13 additional weeks;
- in the event of the child's death, the suspension period is not reduced, unless, after the six mandatory weeks, a return to work is requested; and
- if the mother dies, the other parent may use the entire leave or the remaining part of it.

During the entire leave period, the mother receives 100% of her social security regulatory base. In this sense, the leave period counts as effective working time for all purposes, guaranteeing full economic rights and reinstatement to the job under no less favourable conditions (as already stated in the former legislation).

SWEDEN



Law and Practice

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Advokatfirman Cederquist KB is a Swedish independent law firm that offers full-service from its Stockholm office. It engages more than 100 lawyers from the Swedish market and has developed non-exclusive relationships with firms globally to assist clients in cross-border matters. Major international deals and transactions handled by the firm include acting as legal adviser in corporate acquisitions of Swedish companies on behalf of foreign corporations, investment banks and law firms, as well as acquisitions of

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CEDERQUIST

1. Employment Terms

1.1 Employee Status

In Sweden, there are no statutory definitions of white- and blue-collar workers. Instead, these groups are defined by the applicable trade unions of which the workers are members and, therefore, different collective bargaining agreements (CBA) apply to these two groups. In some labour market areas, the CBA regulations are uniform, and a categorisation of these two groups of workers is not necessary.

The general regulations for employment protection are outlined in the Employment Protection Act. In Sweden, specific terms for employees in the public sector are governed by the Public Employment Act. However, the core rules for employee protection are similar for both private and public sector employees, with the Public Employment Act containing only a few specific provisions for public employees.

1.2 Employment Contracts

The general rule is that an employment agreement is for an indefinite period, unless agreed otherwise. The Employment Protection Act allows for special fixed-term employment when the employer needs fixed-term employees. A fixed-term employment agreement may also be concluded for temporary substitute employment and seasonal employment. An employee who has been employed for a special fixed-term employment for an aggregate of more than 12 months, or as a substitute for an aggregate of more than two years, during the past five years will have their employment converted into indefinite-term employment. A special fixed-term employment may also be converted into an indefinite-term employment if the employee has been employed in different consecutive fixed-term employments. A special fixed-term employment or a temporary substitute employment will not convert into an indefinite-term employment if the employee has reached the age of 68, or the age of 69 if the employee was employed after 1 January 2023.

Note that CBAs may contain regulations deviating from the statutory rules governing fixed-term employment.

In Sweden, an employment agreement does not have to take any specific form to be valid. However, Sweden has implemented Directive 2019/1152 on Transparent and Predictable Working Conditions in the European Union. An employer must provide certain information in writing to the employee concerning the principal terms of the employment, most of which shall be provided within one week of the commencement of the employment. Failure to do so can result in an obligation to pay damages to the employee concerned.

The requisite information includes, inter alia, the name and address of the employer and the employee, the commencement date, the place of work, duties and title, whether employment is fixed or for an indefinite term, the length of the probationary period, periods of notice, payment and other employment benefits, the length of paid annual leave, the length of the typical working day or working week, and information on the applicable CBAs.

1.3 Working Hours

The maximum regular working hours are 40 hours per week. The Working Hours Act sets forth rules concerning overtime work as well as daily and weekly rest for employees. Employees are entitled to a minimum rest period of 11 consecutive hours in any 24 hours ("daily rest"), and to a rest period of 36 consecutive hours per seven-day period ("weekly rest"). Deviations from certain regulations in the Working Hours Act can be made by a CBA, but not in individual employment agreements.

For part-time employees, the equivalent of overtime is called additional time, which comprises the working hours in excess of the employee's regular working hours and on-call time. In cases where there is a special need to increase the number of hours worked, an employee may work an additional maximum of 200 hours over a calendar year (general additional time). When there are special grounds, additional time beyond the general allowance may be worked, up to a maximum of 150 hours per employee over a calendar year. Together, extra additional time and general additional time may not exceed 48 hours per employee over a period of four weeks, or 50 hours over a calendar month.

For full-time employees, overtime comprises working hours over regular working hours and on-call hours. Where additional working hours are required, overtime hours may not exceed 48 hours over a period of four weeks or 50 hours over a calendar month, subject to a maximum of 200 hours per calendar year. When there are special grounds, additional time in excess of general overtime may be worked, up to a maximum of 150 hours per employee over a calendar year. Together, extra overtime and general overtime may not exceed 48 hours per employee over a period of four weeks, or 50 hours over a calendar month. Statutory law does not contain regulations regarding overtime pay, which is normally provided for in CBAs. In general, employees may choose to receive overtime pay in terms of money or compensatory leave. If no CBA exists, the employee is not entitled to overtime pay unless agreed upon individually. If a CBA exists and provides a right to overtime pay, it may contain provisions that allow the employee to waive the right to overtime pay and instead receive compensation in the form of compensatory leave. However, such a waiver usually only applies to employees who have flexible working hours or in cases of special circumstances.

1.4 Compensation

There are no provisions regarding minimum wage requirements in Swedish law, but such provisions are often found in CBAs.

In Sweden, it is common for employers and employees to agree that part of the full salary will be paid as variable salary. The different types of variable salary vary and can be paid out, inter alia, as commission (eg, a certain percentage of the contractual sum for provided services) or as bonus (eg, variable salary paid out under specific and determined targets with financial parameters of the performance of the employing company and/or personal performance of the employee). The payment of variable salary is not regulated in statute and is rather a matter of negotiation between the parties to the employment agreement. It is most common for the terms for the payment of variable salary to be set out in the employment agreement, or for the variable salary targets and the payment of variable salary to be decided annually at the employer's discretion. Variable salary generally qualifies for the payment of holiday pay in Sweden.

In Sweden, a 13th-month payment is not normally applied, but some employers do choose to award their employees with an annual bonus, paid at the company's discretion, if the company has performed well during the year. Such a bonus is paid as a gratuity and normally does not qualify for holiday pay or occupational pension contributions.

There is no general government intervention on compensation and salary increases in Sweden, but such matters are often regulated in CBAs. It should be noted that compensation in connection with holiday, parental and sick leave is statutorily regulated.

1.5 Other Employment Terms

Holiday and Holiday Pay

Holiday entitlement is regulated by the Annual Leave Act, which distinguishes between holiday days and holiday pay, and between a "holiday year" (1 April to 31 March) and a "qualifying year" (the 12 months prior to the holiday year). The normal and minimum holiday entitlement is 25 days paid holiday per year. An employee earns their entitlement to holiday pay during the qualifying year and is entitled to use their paid holiday during the holiday year. CBAs or employment agreements generally contain rules entitling employees to a more extended period of holiday – up to 30 days' paid holiday – if the employee is not entitled to overtime pay. This is normally the case for white-collar employees.

Employees are entitled to take a continuous four-week holiday from June to August, unless circumstances are justifying other arrangements. Employees who have been given a period of notice of termination of less than six months cannot be required to take their holiday entitlement during the notice period, unless they agree to do so. Under certain conditions, employees are entitled to exchange a holiday that has already been scheduled for sick leave or parental leave, for example. Employees can carry over their entitlement to paid holiday days to the next holiday year (but not unpaid holiday days), provided the employee has earned more than 20 days of paid holiday, and only for those days that exceed 20 days.

A CBA can make deviations from certain regulations in the Annual Leave Act.

Holiday pay is usually paid out in connection with the employee's use of their accrued holiday. According to the Annual Leave Act, holiday pay may be calculated according to either the same salary rule or the percentage rule. The same salary rule applies to employees whose remuneration is calculated on a monthly or weekly basis. The percentage rule applies to employees whose pay is not determined on a weekly or monthly basis or who have a significant variable component in their salary. If the variable elements of their salary make up at least 10% of the total salary for the year, the percentage rule will be used.

According to the same salary rule, the employee is paid their regular salary plus a holiday supplement of 0.43% of their monthly salary per holiday. For variable parts of the salary, the employee is paid 12% of the variable salary if they are entitled to 25 days of holiday. According to the percentage rule, the holiday pay for employees is 12% of the total salary paid out during the qualifying year when the employee is entitled to 25 holiday days.

If the employment ends before the employee has taken accrued days of paid holiday to which they are entitled, the employer must pay the employee in lieu of the unused holiday pay entitlement.

Required Leave

An employee may go on parental leave until their child is 18 months old. Thereafter, the employee is entitled to leave for as long as they receive compensation from the state. The state pays compensation for a total of 480 days per child. The compensation may be paid until the child reaches the age of 12 years, but only 96 days may remain when the child reaches the age of four years.

In addition to parental leave, the mother is entitled to parental allowance during the 60 days prior to the expected birth of the child. The father of the child may also be on paternity leave for ten days in connection with the birth of the child.

The entitlement to parental days is divided equally between the parents, but the parents have the right to transfer their entitlements to each other, except for 90 days; these 90 days will be forfeited if they are not

used. As a result, one parent may use a maximum of 390 days, during which the allowance is capped at 80% of the employee's salary up to a certain salary level. Further, parents are entitled to transfer 45 parental days each to someone who is not the guardian of the child.

In Sweden, some employers choose to offer their employees parental leave pay in addition to the parental allowance paid by the state. If a CBA is in force in the workplace, parental leave pay paid by the employer is often mandatory. A parent is also entitled to parental leave and temporary parental benefit if their child is sick.

An employee is entitled to mandatory sick pay payable by the employer, provided that the employment is expected to continue for more than one month or that the employee has been working for more than 14 consecutive days. During days one to 14 of the sick leave, the employee is entitled to 80% of the estimated salary and employment benefits they receive during a normal week. A deduction of 20% is made from the sick pay (*karensavdrag*). If the employee falls ill again within five days, the previous sick leave period will continue, and no further deductions will be made. From day 15 in the sickness period, the employee may be entitled to compensation payable by the state. The entitlement to such compensation is based on strict rules and is decided by the Swedish Social Insurance Agency. There is no obligation for the employer to provide any supplementary sick pay from day 15 in the sickness period, unless such is provided for in an applicable CBA or individual agreement.

Limitations on Confidentiality

An employee's obligation not to reveal confidential information about the employer's business follows from the employee's duty of loyalty during employment. However, according to the Trade Secrets Act, the disclosure of a company's trade secret by an individual to make public or reveal to a public authority or other authorised body a matter that may reasonably be suspected of constituting a criminal offence punishable by imprisonment or that is deemed to constitute another serious irregularity in the company's business activities is not considered an unlawful disclosure. A comparable principle is found in the Whistle-Blowing

Act. As a main principle, there are no limitations on confidentiality agreements in terms of time, but such an agreement may be considered unreasonable and unenforceable by a court if it is too burdensome for the employee.

Non-disparagement clauses are not that common in Sweden, but the duty of loyalty includes a duty not to be disloyal towards the employer through disparagement. However, an employee has a right to put forward a critique of the employer when doing so is justified, as mentioned above.

Employee Liability

The main principle is that the employer is responsible for all damage caused by the employee during employment. An employee is responsible for damage that an employee causes through fault or negligence in his or her employment only to the extent that there are exceptional circumstances with regard to the nature of the act, the employee's position, the interest of the injured party and other circumstances, according to the Tort Liability Act.

2. Restrictive Covenants

2.1 Non-Competes

Post-employment restrictive covenants regarding non-competition are valid under certain circumstances. The main rule is that they must be reasonable, taking many different factors into account, such as whether employees receive some compensation for the restriction, whether the restriction is limited to certain companies, whether the restriction is limited geographically, etc. An overall assessment of all relevant factors has to be made in each individual case.

Non-competition covenants should normally only be used for employees whose position in the company makes such restrictions necessary. In principle, the period of a non-competition covenant should not exceed nine months or, under certain conditions, a maximum of 18 months.

According to CBAs and market practice, employers are obliged to pay approximately 60% of the monthly income from the employer as compensation for the

inconvenience caused by the non-competition covenant. However, a general assessment of the reasonableness of a non-competition covenant must be made in each individual case, which means that other types of compensation may also be accepted as long as they are linked to the non-competition covenant.

Non-competition covenants are normally combined with a contractual penalty, which must be reasonable in relation to the employee's salary. Such a penalty is usually set at between three and six months' salary for each breach. Restrictive covenants may also be combined with a continuing penalty, and the employer can be entitled to further damages if the damage caused by the employee exceeds the amount of the contractual penalty.

2.2 Non-Solicits

Non-solicitation covenants in relation to the solicitation of employees should typically not apply for longer than six months after the employment. A covenant regarding the non-solicitation of employees does not usually need to be combined with any compensation in order to be considered reasonable (unlike non-competition covenants), but should be limited, for example, to colleagues with whom the employee has worked. A general assessment of the reasonableness of a non-solicitation covenant in relation to the solicitation of employees must be made in each individual case.

There is no limitation in time for non-solicitation covenants in relation to customers, but they generally follow the same time limitations outlined in non-competition covenants. Furthermore, in the same way as for non-competition covenants, a covenant regarding the non-solicitation of customers generally needs to be combined with compensation in order to be considered reasonable. Each case must assess the reasonableness of a non-solicitation covenant concerning the solicitation of customers individually.

3. Data Privacy

3.1 Data Privacy Law and Employment

The General Data Protection Regulation (GDPR) is applicable in Sweden and protects individuals against

the violation of their personal integrity by the processing of personal data. Accordingly, there are restrictions on employers' use of data regarding employees, former employees and applicants. There are certain basic requirements for any form of processing of personal data that is fully or partly computerised, according to the GDPR.

Personal data may only be processed if it is lawful to do so. For example, personal data may be processed to satisfy a purpose that concerns a legitimate interest of the employer, provided that this interest outweighs the interest of the registered person in protection against violation of their personal integrity. The personal data must be collected for specific, explicitly stated and justified purposes. The collected personal data needs to be relevant and necessary for the purpose stipulated, and may not be stored for longer than necessary for the specified purposes. It must also be accurate and processed in a manner that ensures appropriate security of the personal data.

Certain types of personal data are considered special categories of personal data, such as:

- information about employees' or applicants' race or ethnic origin;
- genetic data;
- political opinions;
- religious or philosophical beliefs;
- membership of a trade union; or
- personal data concerning health or sexual preference.

Special categories of personal data may only be processed in special circumstances.

The GDPR sets forth certain rights for registered individuals, such as the right to information concerning the processing of their personal data, the right to access, and the right to rectification, erasure, and restriction of processing.

4. Foreign Workers

4.1 Limitations on Foreign Workers

Citizens of countries outside the EU must have a work permit to work in Sweden. In order for a person to obtain such a permit, the employer must have prepared an offer of employment and advertised the job in Sweden and the EU for ten days (this applies to new recruitment). The person applying for a work permit must also be able to show a signed written employment agreement. The terms of employment must be equal to or better than those provided under a Swedish CBA or those that are customary for the occupation or sector. In addition, the employee shall be entitled to health insurance, life insurance, industrial injuries insurance and occupational pension insurance. To qualify for a work permit, the employee must earn enough to support themselves. The gross monthly salary should be at least 80% of the Swedish median monthly salary at the time of application (which is SEK29,680 as of 17 June 2025). Additionally, the relevant trade union must have the opportunity to provide feedback on the terms of employment.

The Posting of Workers Act applies to posted workers in Sweden.

4.2 Registration Requirements for Foreign Workers

EU and EEA citizens do not need a visa and have the right to work in Sweden without work permits or residence permits. People who have a residence permit in an EU country but are not EU citizens can apply to obtain the status of long-term resident in that country, thereby enjoying certain rights similar to those of EU citizens.

Foreign employers with workers posted to Sweden are obliged to report such posting to the Swedish Work Environment Authority.

5. New Work

5.1 Mobile Work

The increase in mobile work imposes new demands on the work environment. The employer's responsibility for the work environment is regulated by the

Work Environment Act, which requires employers to take all necessary measures to prevent workers from being exposed to ill health or accidents. The employer must therefore systematically plan, direct and monitor activities in a manner that ensures that the work environment meets the prescribed requirements for a good work environment. The employer's responsibility for the work environment applies even when employees work remotely.

However, the employer and employees must co-operate to create a good work environment. In the case of mobile work, when the employer's insight into the work environment is limited, employees must consequently alert the employer to any deficiencies in the working environment. The employer's responsibilities include the physical work environment, such as equipment, as well as the social work environment, such as working hours. Furthermore, the rules regarding working hours in the Working Hours Act must be complied with even when an employee is working remotely. Employees are therefore entitled to a minimum rest period of 11 consecutive hours in any 24 hours ("daily rest"), and a rest period of 36 consecutive hours per seven-day period ("weekly rest").

The GDPR applies to mobile work, and the protection of personal data must be upheld in accordance with the GDPR, regardless of where the work is carried out.

An employee working remotely is entitled to the same social security benefits as an employee performing work at a fixed location. This means that the same rights to sick pay, parental leave and holiday pay apply.

5.2 Sabbaticals

The term "sabbatical" is not used in Swedish labour law, but employees may be legally entitled to a leave of absence, depending on the purpose of the leave. The leave of absence entails unpaid leave for a specified period. An employee is not entitled to general leave, but the employer may choose to grant it.

Under certain conditions, an employee may be entitled to necessary leave from their employment to receive education. Pursuant to the Employee Leave (Education) Act, this applies if the employer has employed

an employee during the most recent six months or for a total of not less than 12 months during the last two years.

An employee may also be entitled to leave from work for a maximum of six months in order to pursue a business activity by themselves or through a legal entity. However, the employee's activities must not compete with the employer's business. Employees may have a legal right to a leave of absence for family-related reasons, such as a family member's accident or to care for a seriously ill relative.

5.3 Other New Manifestations

Gig work or platform work is increasingly common. Gig work involves individuals working through platforms, such as an application, and receiving orders for tasks. This type of work is not regulated separately in Swedish law.

An important issue that arises in connection with gig work is whether the individuals working are to be regarded as "employees" in the context of the law, or as independent agents. To be covered by the protection of Swedish labour law, the person carrying out the work must be considered an employee. There is no legal definition of the term "employee"; instead, the court must decide in each case whether a gig worker is to be considered an employee. Note, however, that gig work may become subject to separate regulations through national implementation of the new EU directive on improving working conditions in platform work.

6. Collective Relations

6.1 Unions

Almost 10% of employers in Sweden are members of an employers' organisation, and approximately 70% of employees are members of a trade union. There are approximately 110 different trade unions and employers' organisations in the Swedish labour market. The parties have agreed on more than 650 CBAs, so trade unions are very prevalent on the Swedish labour market. The "Swedish model" of industrial relations is characterised by a high degree of organisation, even though trade union density is currently falling.

The Co-Determination Act contains the general provisions governing the relationship between employers and the trade unions in areas such as association, information, negotiations, industrial actions and labour stability obligations.

According to the Co-Determination Act, an employer has certain consultation and information obligations towards the trade unions. For example, prior to any decision to reorganise the business or terminate employment contracts, the employer must call for and conduct consultations with the trade unions under the applicable CBAs (at both local and national levels, if applicable). Even if a CBA does not bind the employer, they are obliged to consult the trade union of which the employee concerned is a member regarding the planned reorganisation and potential redundancies.

The Act also contains certain interpretation regulations, to the benefit of the trade unions. Generally, these rules give the trade union the right to interpret the CBA until the matter has been finally decided by the court, and are therefore important in the case of disputes.

6.2 Employee Representative Bodies

The local trade unions usually elect one or more representatives to represent the employees at a workplace, under the provisions of the Trade Union Representatives Act. Employees who are trade union representatives may not be prevented from carrying out union work during working hours, may not be discriminated against due to their union activities and are entitled to a reasonable leave of absence to carry out their union activities. The local trade union representative shall manage questions relating to labour at the specific workplace – issues of salary, work environment, reorganisations, etc, are normally covered. A trade union representative enjoys extended protection in a redundancy situation.

The Board Representation Act entitles employees of private companies that are bound by CBAs and have at least 25 employees to appoint two ordinary and two deputy employee representatives to the board of directors. Employees of companies that have at least 1,000 employees and are engaged in different industries are entitled to appoint three ordinary and

three deputy employee representatives to the board of directors.

Moreover, Sweden has implemented the European Works Council Directive (Directive 2009/38/EC) and the Directive establishing a general framework for informing and consulting employees in the European Community (Directive 2002/14/EC).

Lastly, in a workplace where at least five employees are regularly employed, one or more safety representatives should be appointed, following the Working Environment Act. If a collective bargaining agreement binds the employer, safety representatives are appointed by the trade union; if not, they are appointed by the employees.

6.3 Collective Bargaining Agreements

The Swedish system is based on the principle that law and CBAs together shall provide a comprehensive framework.

Through membership in an employers' organisation, the employer is bound by the CBAs applicable to that organisation. The employer is also obliged to apply the terms and conditions of the CBA to employees who are not members of a trade union. It is also possible for an employer to sign a CBA directly with one or more trade unions.

Once a collective bargaining agreement has been entered into and is in effect, an obligation to refrain from industrial action comes into effect and prohibits strikes or lockouts. Breaking the peace obligation will incur liability for damages on the breaching party.

7. Termination

7.1 Grounds for Termination

A dismissal must be based on objective reasons, which are not specifically defined by statute or case law, but can pertain to either redundancy or the employee's personal circumstances. Redundancy covers all reasons attributable to the employer, such as reorganisations, shortage of work or the economic situation of the employer, while personal grounds are

all grounds attributable to the employee, such as the employee's conduct or performance.

An overall assessment of all the factors involved must be made when determining whether there are objective reasons for dismissal. A dismissal with notice will never be considered as being based on objective reasons if there were other alternatives available to the employer, such as relocating the employee elsewhere within the business. Therefore, an employer must investigate whether there are any vacant positions within their business that the employee can be offered before a notice of termination is given.

Dismissal Procedure

The procedure for dismissing employees varies to some extent, depending on whether the dismissal is due to redundancy or personal reasons. The procedural requirements to follow are laid down in the Employment Protection Act. Prior to terminating an employment agreement due to redundancy, the employer may be obliged to conduct consultations under the Co-Determination Act if a CBA binds the employer or if the employee is a member of a trade union.

The basic principle to be applied when the labour force has to be made redundant is that the employee with the longest aggregate period of employment with the company should be entitled to stay the longest: the employer must select those to be laid off on a "last in, first out" basis. A condition for continued employment is that the employee has sufficient qualifications for one of the available positions that may be offered.

Before terminating an employment agreement on personal grounds, the employer must notify the employee concerned in writing and the trade union, if the employee is a trade union member, two weeks in advance. If an employer wants to dismiss an employee without notice summarily, the information must be given one week before the actual dismissal. The employee or the trade union may request consultations with the employer concerning the dismissal, within one week of receiving the information.

The employer must observe certain formal rules set out in the Employment Protection Act when serving

a notice of termination to an employee. Notices shall always be made in writing and must state the procedure to be followed by the employee if they wish to claim that the notice of termination is invalid or to claim damages as a consequence of the termination. The notice shall also state whether or not the employee enjoys rights of priority for re-employment. Several statutes contain limitation periods for bringing employment claims, including the Co-Determination Act, the Annual Leave Act and the Employment Protection Act. Furthermore, the Limitations Act stipulates limitation periods for salary and pension claims.

Dismissal of Multiple Employees

In Sweden, there is no principal difference between a termination due to redundancy involving one employee or such a termination involving 150 employees; hence, the Co-Determination Act does not recognise the term "collective redundancies". In contrast to many other European countries, where the obligation to consult collectively is triggered only if there are several redundancies, the provisions on obligations to consult according to the Co-Determination Act are applicable even if the redundancy concerns only one employee (please see the outline for termination due to redundancy described above).

If more than five employees are subject to a redundancy situation and their employment is being terminated, the employer is obliged to notify the Swedish Employment Agency a certain period in advance, depending on how many employees are being terminated. This also applies if the total number of notices of termination is expected to be 20 or more during 90 days. Failure to observe this notification obligation may result in a liability to pay a special fee to the state.

7.2 Notice Periods

Statutory notice periods from the employer's side vary between one and six months, depending on the length of the employment term, as follows:

- one month if the length of the employment term is less than two years;
- two months if the length of the employment term is at least two years but less than four years;
- three months if the length of the employment term is at least four years but less than six years;

- four months if the length of the employment term is at least six years but less than eight years;
- five months if the length of the employment term is at least eight years but less than ten years; and
- six months if the length of the employment term is at least ten years.

The length of the notice period may be extended by virtue of CBAs or individual contracts. During the notice period, the employee is obliged to perform work for the employer, and is entitled to salary and all other employment benefits. An employer can release the employee from the duty to perform work during the notice period.

The minimum notice period in the case of a termination by the employee is one month, but a CBA or an individual employment contract can extend this.

There are no statutory provisions regarding severance pay. However, an employee may be entitled to severance pay in accordance with an employment agreement or a termination agreement.

Please see **7.1 Grounds for Termination** regarding union consultations and union representation where the employee is a member of a trade union.

7.3 Dismissal for (Serious) Cause

Summary dismissal may take place where the employee has grossly neglected their obligations to the employer.

The summary dismissal may not be based exclusively on circumstances of which the employer was aware either longer than two months prior to the notice of summary dismissal or, should such a notice not be issued, longer than two months before the summary dismissal.

Prior to summarily dismissing an employee, the employer must notify said employee in writing and the trade union, if the employee is a trade union member, one week in advance. Within one week of receiving the information, the employee or trade union may request consultations with the employer concerning the dismissal.

The summary dismissal shall be in writing and shall be given to the employee personally. In the notification of summary dismissal, the employer shall state the provisions with which the employee must comply if he or she wishes to bring legal action alleging that the summary dismissal is invalid or to seek damages on the grounds of the summary dismissal.

Upon the employee's request, the employer shall state the circumstances invoked as reasons for the summary dismissal, in writing if the employee so requests.

Summary dismissal shall be deemed effective when the employee receives the notification of summary dismissal.

Summary dismissal means that the employee is not entitled to any notice period or other termination benefits, according to the employment agreement.

7.4 Termination Agreements

The employer and employee are free to enter into a final settlement in a termination agreement; hence, the employment may be terminated, disregarding the strict rules of the Employment Protection Act. Consequently, an employee may waive their contractual rights. As a rule, an employee cannot waive rights laid down in mandatory law that are not yet accrued, but an employee is free to waive rights that are already accrued. Normally, the employee is financially compensated to enter into a termination agreement with the employer that includes a full and final release. There are no specific procedures or formalities to consider when entering into a termination agreement with an employee.

There are no specific requirements for termination agreements in Swedish law. However, all agreements can be deemed unreasonable and amended or declared invalid by a court, according to general contractual law.

7.5 Protected Categories of Employee

Dismissals that are considered discriminatory according to the Discrimination Act are prohibited. Several other regulations also protect employees from unfair dismissals. For instance, an employee may not be dismissed for reasons related to parental leave, a leave

of absence for educational purposes, or part-time employment. Trade union representatives also have specific protection against dismissal and against discrimination based on their union activities.

A trade union representative may not be given less favourable working conditions or employment terms and conditions as a result of their activities. Upon termination of his or her duties, the employee shall be ensured the same or a comparable position in respect of working conditions and employment terms and conditions as if he or she had no trade union-related duties. Furthermore, in conjunction with a termination due to redundancy and in conjunction with lay-offs, the union representative shall be given priority for continued work, provided it is of specific importance for trade union activities at the workplace.

8. Disputes

8.1 Wrongful Dismissal

The employee could challenge a wrongful termination of employment as not having an objective reason and could be declared invalid by the court. If the termination is declared invalid, the employer may be obliged to retroactively pay salary and benefits for the period from the termination until the court decides to declare the termination invalid, as well as punitive damages, compensation for economic losses and the costs of the litigation.

8.2 Anti-Discrimination

The Discrimination Act prohibits both direct and indirect discrimination as well as harassment in working life based on sex, ethnicity, religion or other belief, disability, sexual orientation, transgender identity or expression, and age.

Furthermore, employers may not discriminate against part-time or fixed-term employees, nor may they mistreat an applicant or an employee for reasons related to parental leave under Swedish law. Trade union representatives are also protected from discrimination based on their union activities.

Where a person who believes that they have been subject to discrimination or reprisals proves facts that

give cause to believe that they have indeed been subject to discrimination or reprisals, the defendant must prove that there has been no such discrimination or reprisals.

A party that violates the prohibitions against discrimination or reprisals, or that fails to fulfil its obligations to investigate and take measures against harassment or sexual harassment under the Discrimination Act, shall pay compensation for discrimination for any humiliation and personal indignity resulting from the violation. When compensation is decided, the specific purpose of combating such violations of the Act shall be taken into consideration. The compensation shall be paid to the person offended by the violation.

An employer who discriminates against an employee, applicant, or other relevant individuals (under the Discrimination Act), or breaches the provisions regarding prohibition against reprisals shall also pay compensation for the loss incurred. However, this does not apply to loss that is incurred in conjunction with a decision pertaining to employment or promotion, nor loss incurred as a result of discrimination in the form of insufficient access.

Furthermore, if someone is discriminated against by a provision in an individual contract or in a CBA in a manner that is prohibited under the Discrimination Act, the provision shall be modified or declared invalid if the discriminated person requests it.

Sweden is in the process of implementing the EU Directive (2023/970) on Pay Transparency. The objective of the directive is to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms.

8.3 Digitalisation

Digital court hearings have become more frequent, but no new legislation has been implemented that specifically regulates digital court proceedings. It is common for a party to a court hearing or a witness to participate digitally. Under the Swedish Code of Judicial Procedure, the court may decide that a participant in a hearing should be present via video if it is appropriate and there are specific reasons for doing

so. Digital participation in court hearings is generally compliant with the right to a fair trial in Article 6 of the European Convention on Human Rights, which is incorporated into Swedish law.

Digital trade union consultations have become more common as well. There is no regulation on the possibility of digital trade union consultations; instead, it is up to the parties involved to decide how a consultation should proceed.

9. Dispute Resolution

9.1 Litigation

The Labour Court is the first and only instance for employment disputes concerning a CBA or in accordance with the Co-Determination Act, or if a CBA applies between the parties. Other employment disputes are resolved in the district courts, with the Labour Court as the first and final instance of appeal.

Negotiations and consultations between employers and organisations can be held at both a local and a central level.

Regarding judicial disputes, since a trade union organisation has the right to bring an action before the court – regarding a dispute of a CBA, for example – this constitutes a form of class action. According to the Class Action Act, an organisational class action can be commenced by a non-profit association that, according to its statutes, will protect the interests of its employees. Class action claims are uncommon in Sweden.

Furthermore, the right to resort to industrial action is a constitutional right laid down in the Instrument of Government, which applies only to trade unions, employers or employers' organisations. Restrictions of this right are set forth in the Co-Determination Act, which stipulates that an employer and an employee who a CBA binds may not initiate or participate in industrial action if an organisation is party to that agreement and has not duly sanctioned the action.

Normally, the employee is represented by a union representative in court if they are a trade union member. Therefore, the employee bears no costs for their representation in court, as the trade union bears the costs. Employers are also sometimes represented by their employers' organisation, but more often they are represented by an in-house legal representative or by a law firm.

9.2 Alternative Dispute Resolution

The employer and the employee may agree in an employment agreement that any future disputes shall be settled by arbitration. Such a clause may be deemed unreasonably burdensome for the employee and set aside by the courts, particularly if the employee does not occupy a managerial or comparable position.

Dispute resolution regulations may also be specified in CBAs.

9.3 Costs

For employment disputes, the main principle regarding liability for litigation costs is found in the Swedish Code of Judicial Procedure – namely, that the losing party shall be ordered to bear the prevailing party's litigation costs. However, according to the Labour Disputes Act, each party may be ordered to bear its own litigation costs if the losing party had reasonable grounds to bring the action. However, this rule is normally only applied in collective bargaining disputes.

SWITZERLAND



Law and Practice

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Walder Wyss

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Walder Wyss is one of Switzerland's leading law firms, with over 280 fee earners and offices in Zurich, Basel, Bern, Lausanne, Geneva and Lugano. It is the only major Swiss firm with a dedicated employment law team, comprising 42 attorneys including eight partners, managing associates, counsel, associates, and an immigration specialist. The team advises exclusively on employment law matters, offering in-depth expertise in employment contracts, restructurings, executive compensation, and cross-border personnel matters. In January 2024, Walder Wyss

launched a specialised immigration desk within the employment team, reflecting the increasing demand for integrated mobility advice. The group regularly assists multinational clients and Swiss corporates in litigation, transactions, collective dismissals, internal investigations and employment compliance projects. The firm's multilingual, office-spanning structure ensures seamless client service across German, French and Italian-speaking regions, setting Walder Wyss apart from other large Swiss law firms in this area.

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1. Employment Terms

1.1 Employee Status

Blue-Collar v White-Collar Workers

As a matter of principle, Swiss employment law does not provide for the traditional differentiation between blue-collar and white-collar workers, but it does occasionally provide for similar differentiations. This particularly applies to the following provisions contained in the Federal Act on Work in Industry, Trade and Commerce (the “Labour Act”) relating to the maximum weekly working time and minimum rest periods.

- Employees holding a higher executive position, employees performing a scientific activity and employees performing an autonomous artistic activity are entirely exempt from any maximum weekly working time and minimum rest periods.
- For ordinary employees in industrial businesses, office staff, technical and other employees (ie, employees performing predominantly intellectual work in offices or office-like jobs), including sales personnel in large retail trade companies, the maximum weekly working time is principally 45 hours.
- For all other employees, particularly those performing predominantly manual activities, the maximum weekly working time is 50 hours. The same applies to office staff, technical and other employees, including sales personnel in large retail trade companies, working in establishments or parts thereof that employ a majority of employees to whom this maximum weekly working time of 50 hours applies.

Other Employee Statuses

There is a whole range of other employee status categories that are subject to special protection (particularly in connection with their working conditions and dismissal) due to their particular personal situation (see **1.5 Other Employment Terms** and **7.5 Protected Categories of Employee**).

1.2 Employment Contracts

Permanent v Fixed-Term Employment Contracts

There are two main types of employment contract in Swiss employment law: permanent and fixed-term employment contracts.

While permanent employment contracts are entered into for an indefinite period and may only end upon notice of termination, fixed-term employment contracts cease automatically at the end of their fixed term and may, as a matter of principle, not be terminated prematurely. The only exception to this relates to dismissals for serious cause (see **7.3 Dismissal for (Serious) Cause**).

Parties' (Limited) Freedom to Choose a Type of Employment Contract

As a matter of principle, parties are free to choose the type of employment contract that best suits their needs. They may even agree on a hybrid construct – ie, an employment contract that provides for a fixed (maximum) term but may also be terminated earlier by way of notice of termination.

In order to guarantee a minimum of employee protection, however, case law has developed limits to such freedom. Most notably, multiple consecutive fixed-

term employment contracts are to be reinterpreted into one permanent employment contract if there has been no objective reason for choosing consecutive fixed-term employment contracts over one permanent employment contract (so-called “illegal chain employment contracts”).

(No) Formal Requirements for Employment Contracts

An employment contract is concluded by way of mutual, corresponding declarations of intent by the employer and the employee, pursuant to which the employee undertakes to work in the service of the employer for a limited or unlimited period, and the employer undertakes to pay remuneration to the employee for such work. As a matter of principle, such agreement does not require the observation of any particular form and can therefore also be concluded orally or even implicitly. However, specific employment contracts such as apprenticeship contracts and contracts with temporary workers require observance of the written form (ie, the contract must be signed by all persons on whom it imposes obligations).

Formal Requirements for Specific Contractual Provisions

For reasons of legal certainty and/or employee protection, a considerable number of specific contractual provisions may only be bindingly agreed upon by observing the written form. This applies, inter alia, to:

- deviations from the statutory compensation for overtime (see **1.3 Working Hours**);
- deviations from the statutory provisions regarding continued salary payments in the case of an employee’s incapacity for work (see **1.5 Other Employment Terms**);
- amendments to the statutory notice periods (see **7.2 Notice Periods**); and
- non-compete clauses (see **2.1 Non-Competes**).

1.3 Working Hours

Maximum Working Time per Week/Day

Pursuant to the Labour Act (see **1.1 Employee Status**), the weekly working time may only exceed 45 or 50 hours in exceptional circumstances, and various provisions with regard to minimum rest periods (in particular mandatory minimum breaks and the general

prohibition of work during the night and on Sundays/public holidays) must be observed which, inter alia, result in a maximum daily working time of 12.5 or 13 hours (depending on the calculation method). However, these principles do not apply to all categories of employees and businesses.

Part-time employees are generally subject to the same provisions as full-time employees – ie, the maximum working time is not calculated pro rata temporis.

(No) Possibility of Flexible Arrangements

The parties’ freedom to deviate from the above-mentioned principles is very limited; the provisions are basically mandatory.

Overtime and Extra Hours

Swiss employment law differentiates between overtime (ie, the hours worked in excess of the contractually agreed or customary weekly working time) and extra hours (ie, the hours worked in excess of the applicable maximum weekly working time, if any).

While the employee is obliged to perform overtime if such overtime is required and to the extent that the specific employee is able and may conscientiously be expected to do so (less frequently the case for part-time employees), the performance of extra hours requires the existence of exceptional circumstances, in addition to the requirements for the performance of mere overtime.

In variable working time systems, there may be a third important category of hours worked in excess of the applicable weekly working time (ie, hours worked based on the employee’s time sovereignty).

Compensation for Overtime and Extra Hours

Pursuant to statutory provisions, overtime and extra hours are principally compensated by corresponding time off (if the employee consents) or an additional salary payment including a 25% surcharge (in the absence of the employee’s consent).

While the parties may contractually exclude any compensation (whether in cash or in kind) for overtime as long as they observe the written form, compensation is mandatory with regard to extra hours. However, for

office staff, technical and other employees, including sales personnel in large retail trade companies, such mandatory compensation for extra hours only applies from the 60th extra hour per calendar year.

1.4 Compensation

Minimum and Maximum Compensation

As a matter of principle, the parties are free to agree on the employee's compensation, although there are deviations from this principle.

The most practically relevant minimum compensation requirements are as follows.

- Selected cantons provide for a general hourly minimum salary (Geneva, Jura, Neuchâtel, Ticino and Basel-Stadt).
- In June 2023, two communities (Winterthur and Zurich) voted in favour of a communal hourly minimum salary; however, the respective provisions are not yet in force due to pending legal proceedings.
- Various collective bargaining agreements (CBAs) and so-called standard employment contracts (ie, a special kind of legislative decree) provide for minimum salaries in selected sectors.

The most practically relevant compensation cap is for Swiss stock corporations whose shares are listed on a stock exchange. They are subject to certain restrictions with regard to the compensation paid to members of the board of directors, the executive board and the advisory board, as well as to persons close to them (eg, the prohibition of severance payments contractually agreed or provided for in the company's articles of association).

Thirteenth Monthly Salary

The parties are free to agree that the salary shall be paid in 13 instead of 12 monthly instalments. In the absence of a different agreement, such 13th monthly salary shall become due at the end of the year. Due to its legal nature as a salary component, the payment of the 13th monthly salary may not be declared subject to conditions, and it must be paid on a pro rata basis if the employment ends before its due date.

Bonus

The term "bonus" is not defined by Swiss law. Accordingly, established case law provides that, depending on the specific (bonus) agreement and the pertinent company practice, a bonus can be qualified either as a salary component or as a gratification (or as one remuneration element consisting of two independent parts).

Legal qualification as salary component or gratification

A bonus qualifies as a salary component if the payment of the bonus and its amount are not subject to the employer's discretion. This is also the case if the exact bonus amount is clearly determinable independent of any subjective assessment.

A bonus qualifies as a gratification, however, if it is a voluntary extra compensation, meaning that the entitlement per se or at least the exact amount of the bonus is ultimately at the employer's discretion.

In addition, if an employee's total compensation is below the five-fold Swiss median salary in the private sector (approximately CHF390,600 in 2022), Swiss law requires that the bonus is only of an accessory nature in order to potentially qualify as a gratification. The bonus is of an accessory nature if it is of secondary importance in relation to the employee's salary; as a rule of thumb, the bonus may not exceed 100% of the salary in order to remain accessory. In the absence of such accessoriness, at least part of the bonus qualifies as a salary component.

Consequences of such legal qualification

The respective legal qualification (salary component v gratification) is of great importance: to the extent that the bonus qualifies as a salary component, it may not be declared subject to conditions (such as an ongoing/not yet terminated employment, vesting, forfeiture, etc) and the employee has a mandatory (pro rata) claim. The exact opposite is true for bonuses that qualify as entirely voluntary gratifications. In the case of gratifications to which the employee is entitled in principle, they have a mandatory claim to part of the bonus (which may not be determined arbitrarily).

1.5 Other Employment Terms

Vacation

An employee is entitled to at least four weeks of fully paid vacation per year (five weeks if the employee is under the age of 20), at least two weeks of which must be taken consecutively. The timing of the employee's vacation is determined by the employer, although the employer must take due account of the employee's wishes.

The vacation entitlement is mandatory and may not, in principle, be replaced by monetary or other benefits during the employment. Subject to exceptional circumstances, (financial) compensation is only possible at the end of the employment.

Other Absences

As a general rule, the employee is only required to perform their work to the extent that this can reasonably be expected from them. However, the fact that an absence is justified does not necessarily mean that it is also paid.

The most practically relevant reasons for an absence are as follows.

- *Illness, accident, legal obligations, public duties and pregnancy* – If an employee is prevented from working by one of these (or equivalently severe) personal circumstances without being at fault, they remain entitled to their full compensation for a limited time, depending on (and increasing with) their years of service, but only if the employment has lasted or was concluded for longer than three months. Provided that the chosen alternative solution is no less favourable to the employee, it is possible to deviate from this rule (in writing) in employment contracts, standard employment contracts or CBAs. In connection with absences whose financial consequences are already covered by compulsory insurance (eg, in connection with accidents, disability and official duties), the employer is only obliged to pay the potential difference between the insurance benefits and 80% of the employee's compensation.
- *Family responsibilities* – To the extent that an employee is legally obliged to care for close relatives (ie, children, spouses and registered partners)

and may not avoid an absence for this purpose through reasonable means, the employee remains entitled to their full compensation as in connection with other legal obligations. Moreover, and potentially in addition to that, an employee is entitled to fully paid short-term leaves of up to three days per incident and a maximum of ten days per year in order to take care of a family member or partner living in the same household with a health impairment (and actually requiring care by the employee). Eventually, working parents of a minor child whose health is seriously impaired due to an illness or accident are generally (jointly) entitled to a care leave of up to 14 weeks per incident and care allowances of 80% of the previous average income (but not more than CHF220/day) during such care leave.

- *Maternity* – Female employees are exempt from the obligation to work for 14 weeks after giving birth. To the extent that the Labour Act applies (see **1.1 Employee Status**), the respective exemption is 16 weeks, and the employee is even prohibited from working during the first eight weeks. During the first 14 weeks, the employee is generally entitled to receive maternity allowances of 80% of the previous average income (but not more than CHF220/day). Should the new-born require hospitalisation, said allowance entitlement may be extended up to 22 weeks in total.
- *Parenthood* – After the birth of their child, male employees (or female employees when they are the non-birthing parent) are exempt from the obligation to work for two weeks within the first six months after the child's birth. During such parental leave, the employee is generally entitled to receive parental allowances of 80% of the previous average income (but not more than CHF220/day).
- *Adoption* – Working parents who take in a child under the age of four for adoption are generally (jointly) entitled to an adoption leave of two weeks within the first year after taking in the child. During such adoption leave, the employee is entitled to receive adoption allowances of 80% of the previous average income (but not more than CHF220/day).
- *Customary hours and days off* – The employee is entitled to the customary hours and days off for dealing with urgent personal matters (such

as doctor's appointments) as well as important family matters (such as the passing away of close relatives), but only to the extent that they cannot reasonably be dealt with during the employee's spare time. Despite the absence of a general employer's obligation to continue compensation payments during such customary time off, the latter is assumed once the parties have agreed on a monthly or weekly salary without an express exception in this regard (the opposite is true for hourly salary earners).

Cantonal law may provide for additional entitlements.

Confidentiality and Non-Disparagement

Pursuant to the statutory employee's duty of loyalty, the employee must not exploit or reveal confidential information obtained while in the employer's service, such as manufacturing or trade secrets. While the respective confidentiality obligation applies unrestrictedly during the employment, its application after the end of the employment is limited to the extent required to safeguard the employer's legitimate interests.

The same duty of loyalty also requires the employee to principally refrain from any actions that could be economically damaging to the employer, including making any derogatory statements towards third parties (regardless of their veracity). Whistle-blowing is only protected under very limited prerequisites – ie, if the employee strictly adheres to the principle of proportionality.

Employee Liability

Principle

Subject to a few special provisions, the employee is generally liable for any financial damage they cause to the employer either deliberately or by negligence. While the burden of proof for the existence of financial damages resulting from an employee's breach of contract lies with the employer, it is the employee who must prove that they were not at fault.

The main difference compared to the usual contractual liability lies in the special standard of care and the various circumstances that can lead to a reduction or even complete elimination of the employee's liability.

Circumstances reducing or eliminating the employee's liability

Of particular importance is the employee's degree of fault: mere minor negligence (ignoring something that should have been considered on closer consideration) may result in an extensive reduction or even complete elimination of liability. Medium negligence (ignoring important rules of conduct but not downright elementary duties of caution) may at least result in a significant reduction of liability.

Other practically relevant circumstances are the occupational risk, the level of education or technical knowledge required for the work in question, and the specific characteristics of the employee of which the employer is or should be aware.

Possibility of deviations in favour of the employee

The above-mentioned statutory principles represent the maximum employee liability. Contractual deviations are only possible in favour of the employee.

2. Restrictive Covenants

2.1 Non-Competes

Statutory Prohibition of Competition During Employment

During the term of employment, an employee is prohibited from competing with their employer by virtue of the statutory duty of loyalty.

Post-Contractual Non-Compete Clauses

Validity and enforceability

The employer may only validly agree and enforce a (post-contractual) non-compete undertaking subject to the following prerequisites:

- the non-compete clause must be agreed in writing, and must particularly determine the time, place and scope of the non-compete undertaking;
- the employee must have gained insight into the employer's customer base or manufacturing or business secrets in the course of the employment;
- the employer must face substantial harm as a result of such insight (this is not the case if, for example, the employee's services were predominantly characterised by their personal abilities);

- the employer must have a substantial interest in the prohibition of competition (such interest particularly ceases if the employment is terminated either by the employer without the employee having given reasonable cause to do so or by the employee after the employer has given reasonable cause to do so); and
- the enforceability of a non-compete undertaking requires appropriate limitation in terms of place, time and scope so that there is no unreasonable impediment to the employee's economic advancement.

While the final point above regarding appropriate limitation is not a validity requirement, agreeing on a (substantial) consideration for the employee's compliance with the non-compete clause does at least significantly increase the chances of the latter's enforcement. If a court, acting on its free discretion, deems an agreed non-compete undertaking to be unreasonable, it will reduce the respective undertaking to a reasonable extent.

Consequences of a violation

If the employee violates a valid and enforceable non-compete clause, they become liable to pay damages to the employer. In order to free the employer from the difficult proof of financial damages resulting from such violation, the parties regularly agree on a contractual penalty. The engagement in a competing activity as such may only be prohibited if this has been expressly and unambiguously agreed upon in writing, and if this is exceptionally justified by the employer's violated or threatened interests and the employee's particularly inappropriate behaviour.

2.2 Non-Solicits

Non-Solicitation Clauses With Reference to Employees

The statutory duty of loyalty prevents the employee not only from competing with the employer but also from enticing away employees during the term of the employment.

Pursuant to the rather controversial case law of the Swiss Federal Supreme Court (SFSC), however, the fact that the statutory provisions only address post-contractual competition in the supply market (but not

in the demand market) shall, as a matter of principle, exclude any valid agreements on the prohibition of enticing away employees after the termination of the employment. The situation shall only be different if such actions also affect the supply market, as is the case when temporary employees are being enticed away.

Non-Solicitation Clauses With Reference to Customers

Since this always involves competition, any prohibitions with regard to enticing away customers are governed by the same restrictions as common non-compete clauses (see 2.1 Non-Competes).

3. Data Privacy

3.1 Data Privacy Law and Employment

As a general principle, the employer may handle data concerning the employee only to the extent that such data concerns the employee's suitability for their job, or to the extent it is necessary for the performance of the employment contract. The general provisions of the Swiss Federal Data Protection Act (DPA) also apply to employment relationships.

The DPA stipulates a number of principles, including proportionality, transparency and limitations on purpose. It notably also provides for a right of information. This right of information is regularly invoked by employees who have been dismissed by their employer with the purpose of accessing their entire "personnel file". However, the DPA explicitly clarifies that the right of information is limited to personal data as such (ie, it does not extend to entire documents) and that the request for information can be denied, restricted or deferred if it is manifestly unfounded (particularly if it pursues a purpose contrary to data protection as in the case of a request that is made solely for the purpose of obtaining evidence for subsequent civil proceedings) or if is manifestly querulous.

Monitoring and control systems designed to monitor the behaviour of employees at the workplace are generally prohibited. If monitoring or control systems are required for other (legitimate) reasons, they must be designed and arranged in such a way that they

do not affect the employees' health and freedom of movement.

4. Foreign Workers

4.1 Limitations on Foreign Workers

In Switzerland, a dual system exists for the admission of foreign workers to the local labour market. Nationals of member states of the European Union and the European Free Trade Association ("EU/EFTA nationals") benefit from the Treaty of Free Movement (TFM) and generally do not need to meet special requirements in order to be permitted to work in Switzerland. However, as a matter of principle, the nationals of other countries ("third-country nationals") may only be granted access to the Swiss labour market as employees if they meet the strict requirements according to the Swiss Foreigners and Integration Act.

4.2 Registration Requirements for Foreign Workers

EU/EFTA nationals wanting to engage in a remunerated activity in Switzerland according to the TFM are granted a residence permit, which automatically includes a work permit. After immigration to Switzerland, they must register at the community office of the future place of residence and apply to the responsible cantonal authorities for the residence permit. Subject to the presentation of a respective employment contract and depending on the duration thereof, either a short-term residence permit L or a residence permit B (for durations of one year or more) is generally granted. Cross-border commuters who do not have their main residence in Switzerland and who return to their home country at least once per week may apply for a special cross-border permit for the duration of five years. All three permits may be extended.

Under certain circumstances, an application for a residence permit is not required of EU/EFTA nationals. In such instances, a prior online notification via the so-called notification procedure suffices (eg, in the case of a temporary employment contract with a Swiss employer with a duration of less than three months).

Third-country nationals primarily have to apply for a work permit before a residence permit will be issued.

Once the employer has submitted the application for the respective employee with all necessary documents, the cantonal labour office will assess it and, if approved, forward it to the federal immigration authority where, in the case of a positive decision, the work permit will be granted. Upon further request, the residence permit (permit L or B) is issued by the cantonal migration office.

5. New Work

5.1 Mobile Work

Need for a Parties' Agreement

As a matter of principle, mobile work is subject to a parties' agreement – ie, there is neither a general employee's right to mobile work nor a general employee's obligation to mobile work. Temporary exceptions to this may apply in exceptional situations (eg, during pandemics or to accommodate specific health needs).

Equipment, Materials and Expenses

Subject to an agreement or customary practice to the contrary, work equipment and materials shall be provided by the employer. However, the parties may agree that the employee must provide these without any compensation.

However, necessary work-related expenses (including rent, electricity, internet, etc) must be mandatorily borne by the employer. No necessity is assumed if the employee's mobile working is at their own request and a permanent and suitable workplace is available in the office.

Data Privacy and Confidentiality

Mobile work may result in the application of additional data protection laws. In addition, the employee remains bound by their statutory duty of confidentiality irrespective of their place of work (see **1.5 Other Employment Terms**).

Occupational Safety and Health

The employer is obliged to take all reasonable measures to protect the physical and mental health of all their employees, including mobile workers. Within its scope of application, this also includes compliance with the health protection, working time and rest peri-

od provisions of the Labour Act (see **1.1 Employee Status**). However, the latter only apply to activities carried out in Switzerland; for activities carried out abroad, other laws may have to be complied with.

Social Security

Employees who are subject to the TFM and are residing in another member state of the European Free Trade Association or the European Union may not carry out a substantial part of their work from their country of residence and remain subject to the Swiss social security system. As per the general rules, this means that being subject to the Swiss social security system requires that an employee carries out less than 25% of their total working activity and earns less than 25% of their total remuneration in their foreign country of residence. However, since 1 July 2023, an increased percentage limit of 49.9% (of the total working time) applies in relation to those states which have also signed the pertinent multilateral understanding (inter alia Austria, France, Germany, Italy and Liechtenstein), provided that employees are conducting so-called telework from their foreign country of residence, although thresholds from a tax perspective generally differ therefrom.

The situation of employees who are not subject to the TFM has to be assessed on a case-by-case basis.

5.2 Sabbaticals

No General Employee's Right

In principle, there is no employee's right to take a sabbatical in the sense of an unpaid special leave in addition to their statutory rights regarding hours and days off and other absences (see **1.5 Other Employment Terms**). It is only in exceptional cases that there is a legal entitlement (eg, for women who are subject to the Labour Act (see **1.1 Employee Status**) and are pregnant, breastfeeding or have recently given birth). In some cases, CBAs (see **6.3 Collective Bargaining Agreements**) or the employment contract provide for a contractual entitlement.

Parties' Agreement

As a rule, the parties are free to agree on the specific terms and conditions of a sabbatical. While there is no formal requirement to be observed, it is generally in the interest of both parties to put this in writing.

Employer's Information Obligations

In any case, the employer is obliged to provide the employee with certain information on the insurance consequences of taking a sabbatical, which depend on their specific circumstances and may be rather complex.

5.3 Other New Manifestations

Driven by the experience gained during the pandemic, there is a tendency in practice toward greater digitalisation and flexibility, in particular regarding the places and times in which work may be performed. This is regularly manifested in the implementation of policies regarding mobile work, desk sharing and/or flexible working structures.

However, there are rather strict limits to this flexibility, especially to the extent that the working time and rest period provisions of the Labour Act apply (see **1.3 Working Hours**), or where mobile work in general and cross-border mobile work in particular is involved (see **5.1 Mobile Work**).

6. Collective Relations

6.1 Unions

Trade unions play a marginal role in some sectors of the Swiss economy, while for other sectors such social partners are highly relevant and active.

In a nutshell, the role of trade unions is to represent employees vis-à-vis employers and to assert the interests of employees on the political stage. Traditionally, this includes the fight for better working conditions, efficient social security and higher wages. Furthermore, in Switzerland, trade unions have established self-help and social institutions, such as unemployment insurance. One of the most important tasks of trade unions is negotiating CBAs (see **6.3 Collective Bargaining Agreements**) as counterparties to employers' associations.

6.2 Employee Representative Bodies

The participation rights of employee representative bodies in Switzerland are regulated by the Federal Participation Act, according to which employees of a company with a headcount of 50 or more are entitled

to constitute a works council. At the request of 20% of the employees (or if demanded by 100 employees in a company with a headcount of more than 500), a vote must be held in order to determine whether the majority of those employees casting a vote are in favour of the suggested constitution of a works council.

If a works council has been set up, management must provide it with all the information necessary to carry out its tasks properly. In particular, the employer must inform the works council at least once a year about the business performance and its effects on the employment relationships.

Swiss employment law provides for the information and consultation rights of the works council in specific events. This applies to questions of occupational safety, the process of transfer of undertakings, and collective redundancy procedures. In rare cases, the works council even has a right of co-decision making or, in other words, a type of veto right over certain decisions made by management.

The consequences of failing to involve the works council vary. For example, the dismissal of employees in the context of collective redundancies without a proper consultation of the works council is valid but deemed abusive (see **7.1 Grounds for Termination** and **8.1 Wrongful Dismissal**).

6.3 Collective Bargaining Agreements

A CBA is a contract between the employer or an employers' association and an employees' association.

The normative regulations become part of the individual employment contract. Those provisions are mandatory and are directly applicable to all employees who benefit from a CBA by contract or by law. Unless they are beneficial to the employee, deviating clauses in employment contracts are invalid. Often, the participating employers also apply the CBA to non-organised employees. Furthermore, CBAs regularly contain contractual provisions that regulate the general obligations and rights of the parties to it, as well as the enforcement of the CBA.

Upon the request of a party to the CBA, the competent authorities may declare a CBA to be generally binding. The effect of this is that the CBA automatically applies to all employers and employees in a particular economic sector or profession, including the ones that do not belong to any association or are not even aware of the existence of the CBA. This procedure has a big practical impact: as of 1 May 2025, as many as 82 CBAs had been declared generally binding (45 on a national level and 37 on a cantonal level).

7. Termination

7.1 Grounds for Termination (Limited) Freedom of Termination

Ordinary terminations of employment (ie, terminations observing the applicable notice period) do not require a particular lawful reason, although the party giving notice must state its respective reasons in writing if the other party so requests. This is not least because the principle of freedom of termination is limited by the prohibition of terminations in bad faith (so-called "abusive" terminations; see **8.1 Wrongful Dismissal**).

Collective Redundancies

Collective redundancies (ie, the dismissal of a certain minimum number of employees within 30 days and for reasons which are unrelated to the person of the affected employee) are subject to specific procedural requirements. An employer may not decide to carry out collective redundancies before having informed (in writing and with a copy sent to the cantonal employment office) and consulted the works council or (if there is none) the employees. In the context of such consultation, the employer must at least provide the opportunity to formulate (non-binding) proposals on how to avoid redundancies, limit their number and/or mitigate their consequences, failing which any respective dismissal would qualify as abusive (see **8.1 Wrongful Dismissal**) and entitle each employee to a compensation claim of up to two monthly salaries. The minimum duration of such consultation depends on the circumstances of the individual case; for standard cases, two weeks is a suitable point of reference.

If the employer still intends to carry out collective redundancies after such consultation, they may take

this decision and issue the required notices of termination. Moreover, the employer must inform the cantonal employment office about the results of the consultation and provide it with further appropriate information in writing, with a copy sent to the works council or (if there is none) to the employees. The latter step is of particular importance since individual employment relationships terminated in the course of collective redundancies may not end until at least 30 days after such notification.

Duty to Issue a Social Plan

An employer normally employing at least 250 employees and intending to make at least 30 employees redundant within 30 days for reasons which are unrelated to the person of the affected employee is obliged to agree on a social plan with the works council or (if there is none) the employees – ie, an agreement setting out measures to avoid redundancies, to reduce their number and to mitigate their consequences. If no agreement can be reached, however, the social plan will eventually be issued by an arbitral tribunal.

7.2 Notice Periods

Notice Periods

Required observance of notice periods

Unless the employer or the employee claims that there is good cause for a dismissal for serious cause (see **7.3 Dismissal for (Serious) Cause**), terminating a permanent employment contract always requires the observance of a notice period.

Statutory notice periods

Pursuant to the statutory provisions, the following notice periods apply:

- during the probation period (by default the first month of an employment), the employment may be terminated at any time by giving seven days' notice; and
- after completion of the probation period, if any, the employment may be terminated at one month's notice during the first year of service, at two months' notice between the second and the ninth year of service and at three months' notice thereafter, with all such notice to expire at the end of a calendar month.

Possible deviations from the statutory notice periods

Both the probation period and the notice periods (including their effective date) may be amended by written agreement, standard employment contract or CBA, subject to the following restrictions:

- while it is possible to exclude any probation period, the probation period may not be extended beyond three months;
- the notice period may not be less than one month (unless agreed within a CBA and for the first year of service only); and
- the notice periods must principally be the same for both parties (unless the employer has already given notice for economic reasons or at least expressed such an intention) – if the parties nevertheless agree on unequal notice periods, the longer period is applicable to both parties.

Severance

Pursuant to the statutory provisions, the employer is only required to pay the employee compensation during the notice period. While the employer may not unilaterally move the termination date forward by providing a payment in lieu of the notice period, they may put the employee on garden leave during such period (possibly offsetting at least part of the employee's vacation balance and a replacement income), unless the employee exceptionally claims a legitimate interest in effectively rendering their work (eg, professional athletes and surgeons). However, subject to the respective prohibition with regard to Swiss stock corporations whose shares are listed on a stock exchange (see **1.4 Compensation**), providing for severance payments in employment contracts or CBAs is perfectly possible.

(No) Formalities to Be Observed

Issuing a valid notice of termination does not require the observance of any formalities, other than in connection with collective redundancies (see **7.1 Grounds for Termination**) or in the case of a respective contractual agreement (eg, a written form requirement provided by an individual employment contract). For evidentiary purposes, however, it is most recommendable to issue notices of termination in such a way that the fact and date of receipt can be proven.

7.3 Dismissal for (Serious) Cause

Dismissal for Serious Cause

Either party may at all times terminate an employment with immediate effect. While the law declares that dismissal for serious cause must be subject to the existence of good cause, even dismissal for serious cause without good cause results in an immediate termination of the employment. The (non-)existence of good cause therefore only determines the further legal consequences of dismissal for serious cause. The party declaring dismissal for serious cause must state its respective reasons in writing if the other party so requests.

Good Cause

Good cause is assumed if the party declaring dismissal for serious cause may not reasonably be expected to continue the employment until the expiry of the applicable notice period or the agreed fixed term. While the competent court has a large margin of discretion when assessing this requirement and will consider all circumstances of the particular case, it is well established that good cause may only be affirmed in exceptional and particularly severe cases. Also, in order not to forfeit the right to dismissal for serious cause, it is necessary for the dismissal to be declared within a few days (usually two to three working days) of becoming aware of the relevant (good) cause.

Consequences of Dismissal for Serious Cause

As already explained, a dismissal for serious cause results in the immediate termination of the employment.

In the most practically relevant scenario, where the employer issues dismissal for serious cause due to an employee's (alleged) breach of contract, the following applies:

- if the employer exceptionally succeeds in proving good cause, the employee loses any claims arising from the employment that have not yet been earned (in particular future salary payments) and becomes liable to pay damages to the employer; or
- if the employer fails in proving good cause, the employee is entitled to what they would have earned if the employment had been terminated observing the applicable notice period or by expiry

of an agreed fixed term (minus any savings and a replacement income resulting therefrom) and to an additional penalty payment of up to six month's salary.

(No) Formalities to Be Observed

With regard to the (absence of) formalities to be observed, the explanations in connection with ordinary terminations (see 7.2 Notice Periods) principally apply mutatis mutandis. The only (rather theoretical) difference is that dismissal for serious cause may arguably not even be declared subject to the observation of contractually agreed formalities.

7.4 Termination Agreements

Permissibility and Requirements

Swiss employment law principally allows for the conclusion of termination agreements, but there are strict limits on the parties' freedom of contract. Most importantly, termination agreements may not be concluded in order to circumvent statutory provisions protecting employees' interests (in particular, mandatory provisions in connection with incapacities for work due to illness or accident – see 7.5 Protected Categories of Employee); but must rather constitute actual settlements in which the employer also makes concessions. In most cases, one of the very purposes for concluding a termination agreement is to obtain clarity with regard to the termination date by excluding any prolongation of the employment in connection with an employee's incapacity for work, so the parties regularly agree on an additional "voluntary" employer's payment to compensate the employee for such concession. Another popular motive for such an additional employer's payment is to compensate for the impending consequences of an abusive termination (see 8.1 Wrongful Dismissal).

Reflection Period

Pursuant to (controversial) case law, the conclusion of a termination agreement initiated by the employer requires the employee to be granted a sufficient reflection period. There are no other specific procedures or formalities to be observed when concluding termination agreements.

Consequences of Non-Compliance

As non-compliance with the “actual settlement” or reflection period requirements may lead to the entire termination agreement being declared null and void, strictly adhering to these requirements is of the utmost importance in order to actually obtain the envisaged legal certainty.

7.5 Protected Categories of Employee Temporal and Substantive Protection Against Dismissal

Notwithstanding the governing principle of freedom of termination, Swiss employment law provides for both temporal and substantive protection against dismissal. In this context, certain categories of employees benefit from stronger protection than others.

Categories Benefiting From Specific Temporal Protection

In particular, the following categories of employees benefit from specific temporal protection against dismissal (after completion of the probation period, if any).

- *Employees performing Swiss compulsory military service, civil defence service or alternative civilian service* – Protection against dismissal during such performance and potentially during a certain period before and after.
- *Employees being (partially) incapacitated for work due to illness or accident through no fault* – Protection against dismissal during such incapacitation, but at most for 30, 90 or 180 days (depending on the employee’s years of service).
- *Pregnant employees and new mothers* – Protection against dismissal during the pregnancy and for 16 weeks after delivery (possibly for a longer duration in case of a hospitalisation of the newborn or the death of the other parent). Other than in case of the death of the new mother, employees entitled to parental leave do not benefit from a comparable temporal protection against dismissal, however, and may only benefit from an extension of the notice period corresponding to the not yet taken days of parental leave (see **1.5 Other Employment Terms**).
- *Parents of a minor child with serious health impairments* – Protection against dismissal as long as the

entitlement to care leave exists, but no longer than six months from receipt of the first daily care allowance (see **1.5 Other Employment Terms**).

Generally, each of these circumstances triggers separate “proscribed periods”, although an exception to this principle applies for incapacities for work arising from one and the same medical condition (relapses in particular).

Any notice of termination given during such proscribed periods is considered void and must be re-issued after the expiry of the proscribed period in order to become effective.

Where notice of termination has been given prior to the commencement of a proscribed period, said notice remains effective. In this case, however, the notice period is temporarily suspended and does not resume until the expiry of the proscribed period. Finally, the prolonged employment is further extended until the next usual end date (ie, generally the next end-of-month, unless agreed otherwise) to ensure consistency with the usual job change dates.

Categories Benefiting From Specific Substantive Protection

The following categories of employees benefit from specific substantive protection against dismissal.

- *Employees performing non-voluntary legal obligations, members of a trade union and employees performing trade union activities (in a lawful manner) and members of the works council or elected members of a body linked to the business* – Protection against dismissal due to such status.
- *Older employees with many years of service* – This category may, under certain circumstances (in particular, the employee’s position), benefit from an increased employer’s duty of care so that the employer must, as a matter of principle, timely inform and consult the employee regarding an intended dismissal, grant the employee a last chance and also evaluate possibilities to continue the employment before effectively giving notice.

Any dismissal due to such status or in violation of an employer's increased duty of care would be considered abusive (see **8.1 Wrongful Dismissal**).

8. Disputes

8.1 Wrongful Dismissal

Grounds for Wrongful ("Abusive") Termination Claims

Despite the principle of freedom of termination, terminations can be considered abusive when issued in bad faith (see **7.1 Grounds for Termination**). This general criterion is specified in a non-exhaustive legal enumeration of circumstances.

A notice of termination is considered abusive when it is given by either party in the following circumstances:

- on account of an attribute pertaining to the person of the other party, unless such attribute relates to the employment or substantially impairs co-operation within the business;
- because the other party exercises a constitutional right, unless the exercise of such right violates an obligation arising from the employment or substantially impairs co-operation within the business;
- solely in order to prevent claims under the employment from accruing to the other party;
- because the other party asserts claims under the employment in good faith; or
- because the other party is performing a non-voluntary legal obligation.

A notice of termination given by the employer is considered abusive when it is given in the following circumstances:

- because the employee is or is not a member of a trade union or because they carry out trade union activities in a lawful manner;
- while the employee is an elected employee representative on the works council or on a body linked to the business and the employer cannot cite just cause to terminate the employment; or
- in the context of collective redundancies, without having consulted the works council or (if there is none) the employees.

However, case law has developed further cases in which a termination may be deemed abusive.

Consequences of Abusive Terminations

Even an abusive termination remains valid and there is, in principle, no claim to continued employment (see **8.2 Anti-Discrimination** for an exception to this principle). However, the terminated party is entitled to a compensation payment of up to six monthly salaries (two monthly salaries in connection with collective redundancies – see **7.1 Grounds for Termination**). The exact amount of compensation is to be determined considering all circumstances of the particular case (such as the seriousness of the terminating party's misconduct).

Procedural Requirements

In order to avoid the forfeiture of such compensation claim, the party receiving notice must submit a written objection against the termination before the expiry of the notice period, and it must bring the claim before the courts within 180 days of the end of the employment.

8.2 Anti-Discrimination

General Principles

Anti-discrimination issues are typically raised in connection with abusive termination claims (see **8.1 Wrongful Dismissal**). In general, it is the terminated party that must prove the existence of the circumstances leading to the abusiveness of the termination.

Specific Provisions Regarding Gender Discrimination

Federal Act on Gender Equality

The Federal Act on Gender Equality (GEA) provides for specific protection against both direct and indirect discrimination on the basis of gender in all areas of working life, not least by providing for a special burden of proof and additional damages/relief.

Burden of proof

The GEA provides for a lowered burden of proof for the employee. In connection with the allocation of duties, the setting of work conditions, pay, basic and continuing education and training, promotion and dismissal (but not in connection with a discriminatory refusal of employment and sexual harassment), discrimination

is presumed if the employee can at least substantiate this with *prima facie* evidence.

Applicable damages/relief

Under the GEA, an employee may challenge a dismissal if it takes place without reasonable cause following an employee's internal complaint of discrimination based on gender or an employee's initiation of respective proceedings before a conciliation board or a court (so-called revenge dismissal). However, according to an express GEA provision, the employee may also opt against continuing the employment and claim a compensation payment for abusive termination.

The GEA also provides for a whole range of remedies against gender discrimination beyond the field of terminations of employment. In particular, an employee may claim the (retrospective and future) elimination of a discriminatory pay gap. In the case of discrimination by way of sexual harassment, the employee may, *inter alia*, claim a compensation payment of up to six monthly average salaries in Switzerland, unless the employer proves that they took measures that have been proven in practice to be necessary and adequate to prevent against sexual harassment and which they could reasonably have been expected to take.

In the case of a discriminatory refusal of employment, the employee may claim a compensation payment of up to three monthly salaries.

8.3 Digitalisation

While international arbitration proceedings have been highly digitalised for quite some time, the same cannot be said about ordinary civil proceedings in Switzerland. However, since 1 January 2025, there has finally been a legal basis in Switzerland for conducting hearings and examining witnesses through videoconferencing (or teleconferencing) in ordinary civil proceedings. However, this always requires the consent of all parties involved.

9. Dispute Resolution

9.1 Litigation

Specialised Employment Forums

As a matter of principle, employment disputes between private parties are adjudicated by the ordinary judicial instances. Many cantons have established specialised employment court panels for this purpose.

Special provisions apply for employment disputes where the amount in dispute is less than CHF30,000, or for disputes that are based on the GEA (see **8.2 Anti-Discrimination**). In these cases, the court generally establishes the facts *ex officio*, and the respective proceedings are characterised by their simplicity and effectiveness in terms of time and costs (there are no court fees, for example, but, subject to further cantonal exemptions, there are costs for professional representation).

(No) Class Action Claims

Swiss law does not provide for class action claims. However, the court may decide to order the joinder of separately filed claims.

Representations in Court

Generally, only lawyers are allowed to act as professional representatives in court proceedings. Cantonal law may provide for exceptions from this principle, however, particularly in connection with employment law disputes.

9.2 Alternative Dispute Resolution

Domestic Arbitration

While the topic of the domestic arbitrability of employment disputes is intensely debated in Swiss doctrine, the SFSC has recently confirmed that an employee's claims against their employer are not arbitrable if they arise from mandatory provisions of the law or a CBA. However, the situation looks different for arbitration agreements concluded one month after the termination of the employment: from this point in time, the parties may conclude an arbitration agreement with regard to any and all claims arising from the employment.

International Arbitration

In international arbitration, employment disputes shall principally be arbitrable without any specific restrictions.

9.3 Costs

In most cases, the general rule applies that procedural costs (court fees and costs for professional representation, if any) are allocated in proportion to the outcome of the case (ratio of prevailing and losing; see **9.1 Litigation** for the potential absence of court fees and costs for professional representation in some cases).

Moreover, it is important to note that the potentially reimbursed costs for professional representation do not correspond to the actual costs incurred but are determined based on cantonal tariffs, mainly depending on the amount in dispute and hardly ever matching the effective costs. Subject to a respective (standard) agreement to this effect, any difference must be borne by the client.

Trends and Developments

Contributed by:

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Walder Wyss

Walder Wyss is one of Switzerland's leading law firms, with over 280 fee earners and offices in Zurich, Basel, Bern, Lausanne, Geneva and Lugano. It is the only major Swiss firm with a dedicated employment law team, comprising 42 attorneys including eight partners, managing associates, counsel, associates, and an immigration specialist. The team advises exclusively on employment law matters, offering in-depth expertise in employment contracts, restructurings, executive compensation, and cross-border personnel matters. In January 2024, Walder Wyss

launched a specialised immigration desk within the employment team, reflecting the increasing demand for integrated mobility advice. The group regularly assists multinational clients and Swiss corporates in litigation, transactions, collective dismissals, internal investigations and employment compliance projects. The firm's multilingual, office-spanning structure ensures seamless client service across German, French and Italian-speaking regions, setting Walder Wyss apart from other large Swiss law firms in this area.

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Swiss-EU Relations

For several years now, Switzerland and the EU have been negotiating on how to renew and amend their bilateral agreements, with one of the main points of discussion being the question of how to safeguard the EU's principle of freedom of movement for its citizens without it negatively affecting Swiss salaries and working conditions.

Switzerland was able to successfully negotiate a clarification of the existing safeguard clause with the EU. This means that Switzerland can now independently initiate a procedure to activate the safeguard clause if the application of the Treaty of Free Movement (TFM) leads to serious economic or social difficulties in Switzerland. If the joint committee of the TFM fails to reach an agreement, Switzerland can refer the matter to the arbitration panel without the EU's consent. The arbitral tribunal will then decide whether serious economic or social difficulties exist.

If so, Switzerland may independently take appropriate protective measures against the EU. However, if this leads to an imbalance, the EU may take compensatory measures within the scope of the TFM.

Even if the arbitral tribunal denies the existence of serious economic or social difficulties, Switzerland may decide to take appropriate measures to address the identified issues. However, it must then accept that the EU could initiate dispute settlement proceedings for breach of the TFM and implement proportionate compensatory measures under one of the internal market agreements.

While the negotiations between Switzerland and the EU were formally concluded on 13 June 2025, it is currently still unclear if and when Switzerland will be able to ratify the revised agreements given that the agreements will likely be subject to a national referendum.

New Case Law Regarding COVID-19 Vaccine Mandates

During the COVID-19 pandemic and in light of many countries' far-reaching entry restrictions, Swiss International Air Lines required its pilots and cabin crew members to provide proof of vaccination against the COVID-19 virus citing health and safety but also

operational reasons for its decision. Most employees complied with the airline's instructions or chose one of the alternatives offered by the airline. However, a small percentage of employees did not comply, and, after having been let go by the airline, filed for wrongful termination.

In deciding on four of these cases, the district court of Bülach ruled that the airline had been within its rights to require its pilots and cabin crew members to provide proof of vaccination against COVID-19 during the COVID-19 pandemic and subsequently dismissed the former employees' claims for wrongful termination.

Swiss scholars expect these decisions to set a precedent regarding employer-imposed vaccine mandates in the Swiss private sector.

Retention and Sign-on Bonuses Jurisprudence

On 19 February 2025, the Swiss Federal Supreme Court (SFSC) issued yet another ruling in line with its very restrictive jurisprudence regarding retention and sign-on bonuses. Therein, the SFSC qualified a disputed bonus as a salary component rather than a gratuity (ie, discretionary payment) citing that the employer and the employee had agreed on the payment of the bonus in principle as well as on its amount and its payment dates. As a result of this qualification, the SFSC ruled that the agreement between the parties, which had made the payment of the bonuses conditional on the employee still being employed by the employer on the dates the bonuses became due, to be unenforceable since such conditions are only permitted in case of gratuities. The SFSC therefore ordered the employer to pay the employee, whose employment with the employer had ended just before one of the agreed upon due dates, a prorated bonus.

This ruling has drawn substantial attention and criticism from Swiss legal scholars, not only because the SFSC did not take into consideration the overwhelming criticism from the Swiss legal community of the SFSC's jurisprudence on the enforceability of payment conditions regarding salary components, but also for the very brief legal reasoning the SFSC offered as to why it chose to overturn the two prior instances' qualification of the bonus as a gratuity.

Federal Challenge to Cantonal Minimum Wages

While Switzerland has so far not introduced a nationwide minimum wage, several Swiss cantons (ie, Neuchâtel, Jura, Ticino, Basel-City and Geneva) as well as the cities of Zurich and Winterthur have all passed laws to implement such minimum wages. These minimum wages currently range from CHF20.00 (Ticino) to CHF24.48 (Geneva) per hour.

While such minimum wages have been the topic of many legal discussions and ongoing legal challenges, one of the Swiss chambers of parliament has recently voted to approve a proposal that aims at limiting the applicability of such minimum wages by promoting a law that would allow employers to pay wages below the cantonal/municipal minimum wages if such lower wages are based on an applicable collective bargaining agreement. Given the fierce opposition by socialist parties and workers' unions, it currently remains unclear whether the Swiss legislature will pass such a law and, should this be the case, if such a law would be challenged by the Swiss people through means of a national referendum.

Meanwhile, the minimum wages in the cities of Zurich and Winterthur have still not been implemented. After the people of Zurich and Winterthur had voted on 18 June 2023 to implement such minimum wages, a subsequent appeal was approved by the Zurich Administrative Court. The decision of the Zurich Administrative Court has since been appealed to the SFSC, where the case is still pending.

New Legal Framework for Telework

In part due to the mix of expensive living costs and attractive working conditions as well as its geographical location in the heart of Europe, more than 400,000 persons regularly commute to Switzerland under the cross-border regime. This regime allows such workers to work for an employer based in Switzerland while maintaining their primary residence in another country. Switzerland generally profits from this set-up as it can tax cross-border workers' salaries through the withholding tax regime. Thereunder, Swiss-based employers are responsible for ensuring that withholding tax is handled correctly, deducted from the respective salary in accordance with the applicable rates and paid to the locally competent Swiss tax authority. However,

in the case of cross-border workers working remotely from their homes outside of Switzerland, Switzerland has historically not been entitled to tax such income earned abroad, given that tax jurisdiction under Switzerland's double taxation treaties generally falls to the country in which the work is physically performed.

In recent years, Switzerland has been focused on resolving this issue by concluding respective tax agreements with both Italy and France. These agreements stipulate that if cross-border workers do not perform telework above certain thresholds from their respective primary residences abroad (ie, 40% in case of France and 25% in case of Italy), Switzerland remains entitled to tax such work even though it has not been physically performed in Switzerland. Against this background, Switzerland has now enacted new legislation allowing for such a regime change in regard to its five neighbouring countries (ie, France, Italy, Austria, Liechtenstein and Germany) and is looking to enact further legislation to allow for an automatic exchange of salary data with such countries in light thereof.

While this regime change is expected to increase Swiss tax revenue, it has also significantly increased regulations for Swiss employers employing cross-border workers. Swiss employers now have an obligation to certify and report the number of working days their cross-border workers have spent working from their primary residence abroad. In addition, Swiss employers will have to closely monitor how many days their cross-border workers are working from their primary residence abroad with the aim of ensuring that the applicable, country-specific limits are not surpassed in order to avoid related tax and social security consequences.

Domestically, Switzerland is also aiming to amend its legal framework to better account for the needs and challenges surrounding telework. The Swiss legislature is currently discussing a proposal by the Swiss Federal Council to amend both Swiss public and contractual employment law given that the current legal framework is often perceived to be too restrictive in terms of achieving an optimal work-life balance and employees' wish to reconcile family obligations with their professional lives. The proposal intends to enable

employees who perform telework to organise their working hours more flexibly by extending the period for daytime and evening work and shortening the daily rest period, allowing for up to six days of “Sunday work” (it is generally prohibited to work on a Sunday or public holiday in Switzerland) of no more than five hours per day without the employer requiring a special permit, as well as introducing an employee’s right to disconnect during specific times (eg, during daily rest periods, on Sundays or while on vacation). It is currently still unclear if and when these changes will come into effect as parliamentary discussions are still on-going.

New Case Law Regarding the Gig Economy

On 5 February 2025, the SFSC ruled that a Geneva-based food delivery service company was engaged in a staff leasing operation. The delivery service company had entered into a licence agreement with Uber to use the UberEats app in order to process orders and had employed approximately 400 couriers to deliver the food orders to customers in the Geneva area. The SFSC dismissed the delivery service’s appeal against the ruling of the Geneva Cantonal Court, which had also classified the Geneva-based company’s activities as constituting staff leasing.

While it remains unclear how many other Swiss-based companies have been operating under the same set-up, this recent decision will likely impact the gig and platform economy in Switzerland given that staff leasing is a highly regulated industry. Companies who wish to engage in staff leasing in Switzerland are subject to a generally applicable collective bargaining agreement if staff leasing is the company’s main activity, are generally obliged to use government approved employment and service contracts and generally have to obtain a governmental licence. Non-compliance with these regulations can even result in criminal prosecution, not only of the service provider engaging in staff leasing operations, but also of the service recipient.

Revision of the Swiss Civil Procedure Code

On 1 January 2025, a revised version of the Swiss Civil Procedure Code came into force and with it several amendments to provisions that affect employment-related civil proceedings.

Under Swiss civil procedure law, the claiming party generally has to pay an advance on the estimated court costs before the court will review said party’s claim. This obligation of upfront payment has been widely criticised by consumer protection advocates in particular, who claimed that it limited access to the Swiss civil court system for persons with limited financial means. While Swiss procedure laws do foresee free access to the Swiss court system, such legal aid is limited to situations where the aid-seeking party does not have the necessary resources to pursue their claim and their claim does not appear futile to the competent court.

In order to increase the accessibility of the Swiss civil court system, the new Swiss Civil Procedure Code now places a limit on the advance payments courts can require from the claimant party. Under the new regime, such advances are limited to a maximum of 50% of the estimated court costs with exceptions applying to a few specific proceedings (eg, conciliation and appeal proceedings where the authorities may still request an advance of up to 100% of the estimated court costs). While no court fees can be levied on the parties if an employment-related court proceeding is limited to an amount in dispute of a maximum of CHF30,000, no such exception applies to disputes in excess of this threshold. This means that the new cost regime will also provide a certain degree of relief from advance costs for parties with employment-related claims in excess of CHF30,000. Furthermore, under the new Swiss Civil Procedure Code the court has to refund the winning party any advances on court costs it might have paid and can no longer offset such advances against the court costs incurred. Thus, the parties to the proceeding no longer bear the collection or credit risk of the other party for the state’s court costs. Rather, it is now the state that has to claim such costs from the losing party.

Also, while there had been a brief exception during the COVID-19 pandemic, until recently Swiss civil courts have not had a legal basis on which to conduct hearings by video or telephone conference. This has now been amended under the new Swiss Civil Procedure Code. As of 1 January 2025, Swiss courts may, upon request or on their own initiative, conduct oral proceedings by video or telephone conference provided

that all parties agree, no overriding interests exist and that specific technical conditions are being met.

Lastly, the revised Swiss Civil Procedure Code has further expanded the powers of the conciliation authority. Under the revised provisions, conciliation authorities may now make decision proposals in cases where the amount in dispute does not exceed CHF10,000. Before the revision, this power had been limited to proceedings with amounts in dispute of up to CHF5,000. It is noteworthy that decision proposals by a conciliation authority become valid and binding decisions if none of the parties involved files a written rejection within 20 days of their issuance. Furthermore, if a party that is required to appear to a conciliation hearing fails to do so, the conciliation authority may issue said party an administrative fine of up to CHF1,000.

Entitlement to Daily Sickness Allowances

In a decision of 1 October 2024, the SFSC adjudicated the case of an employee with an annual salary of CHF565,287.85 who had been dismissed by his former employer on 22 January 2021 as per 31 July 2021. During his notice period, the employee fell sick, which extended his employment relationship until 31 January 2022.

The employer had concluded a daily sickness benefits insurance policy stipulating a waiting period of 60 days and offering coverage of 90% of the insured salary. Once the employee fell sick, the employer informed the insurance company thereof. However, the insurance company refused to pay out daily sickness allowances to the employee after the waiting period of 60 days had passed on 20 August 2021, which ultimately led the employee to file a claim with the Geneva courts against the insurance company. The Geneva Social Insurance Chamber subsequently found that the insurance company was liable to the employee for daily sickness allowances on the basis of 90% of the employee's insured salary from 20 August 2021 until 31 January 2022, while also taking into consideration the employee's varying degrees of sickness-related inability to work.

The insurance company's appeal proved successful as the SFSC ruled to overturn the lower court's decision. The SFSC held that if an insured employee falls

ill after having been dismissed, the employee bears the burden of proof that they would have been able to work and thus been entitled to unemployment benefits if they had not fallen ill. Furthermore, the SFSC held that it cannot be assumed that the dismissed employee would have earned their old salary unless a specific job and salary was in prospect, and that without proof of probable gainful employment, the employee's insured loss does not consist of the insured salary but only of the lost (capped) unemployment benefits to which they would have been entitled had they not fallen ill. The SFSC therefore referred the case back to the lower court for a recalculation of the – now significantly lower – daily sickness benefits.

New Case Law Regarding Summary Dismissal

In a recent decision rendered on 15 January 2025, the SFSC confirmed the legality of a summary dismissal of an employee due to failure to inform the employer in a timely manner about having fallen ill during the notice period. The employee who had already been ordinarily dismissed had failed twice to inform her employer of the medically determined duration of her sick leave even though the duration was known to her. In its decision, the SFSC held that Swiss law requires employees, among other things, to protect the legitimate interests of their employer in good faith and that this also includes a duty to provide information to the employer. Specifically, the SFSC found that employees must notify their employer of foreseeable absences as early as possible and report unforeseeable absences immediately after they occur. This duty to notify also applies to absences due to illness or accident. The SFSC further stated in its decision that the employer has a legitimate interest in finding out as quickly as possible whether and, if so, when an employee will be back at work. The SFSC therefore held that the employee should have informed the employer of her continued absence immediately after her second doctor's appointment. Since the employee failed to do so, she had disregarded her duty to provide prompt, continuous and complete information to her employer. This conduct ultimately made it unacceptable for the employer to continue the employment relationship meaning that the employer had good cause to terminate it with immediate effect.

Failure to disclose information was also the topic of another justified summary dismissal case before the Swiss courts, concerning an employee who had been employed by the company as HR operations manager since 2011 and reported directly to the HR director. Between 2011 and 2017, the employment relationship was constructive, and in 2016, the employee even received an award as “team player of the year”. In the same year, the HR director granted the employee and other team members access to his Outlook calendar. For reasons that remain unclear, however, the employee also gained access to the HR director’s Outlook inbox, something that had not been intended by the HR director. The employee then proceeded to read the HR director’s business and private emails. At the turn of the year 2017/2018, the company decided to terminate the employee’s employment contract at the end of June 2018 as the employee’s relationship with his colleagues had deteriorated. As part of a routine check on (soon to be) dismissed employees, the CISO of the company reviewed the employee’s IT activities. There, it was discovered that the employee had transferred a large amount of HR data to his private network. The HR director was informed and determined that the employee could only have accessed the transferred HR data through access to his inbox. During a subsequent meeting between the employee and the HR director, the employee admitted that he was aware of his imminent dismissal and that he had had access to the HR director’s email inbox. The company proceeded to terminate the employee’s employment with immediate effect a few days later.

The resulting lawsuit by the employee for unjustified summary dismissal was ultimately dismissed by the court of first instance and the Geneva Cantonal Court. In its decision, the Geneva Cantonal Court held that even if it could not be proven beyond doubt that the employee had read e-mails of private nature, the employee’s behaviour constituted a serious violation of privacy. In the court’s opinion, the employee had been obliged to inform the HR director that he had access to the HR director’s e-mail inbox in accordance with his duty of loyalty. The court held that the employee did not act in accordance with his duties and even tried to conceal his access and behaviour by marking e-mails as “unread” after he had read them.



Law and Practice

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Dentons Taiwan (Dacheng Taiwan) was established in 2010 and boasts over 50 lawyers and legal consultants. As one of the world's largest law firms, the Taiwan office has approximately ten lawyers specialising in employment and labour law, providing strategic legal solutions to ensure multinational businesses align with local laws while maintaining a consistent corporate culture. The firm offers extensive expertise in a variety of practice areas, including labour and employment, TMT, dispute resolution, corporate and

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1. Employment Terms

1.1 Employee Status

The Taiwan Labor Standards Act does not specifically distinguish between blue- and white-collar workers with respect to domestic employees. Instead, this distinction mainly applies to foreign workers under the Employment Service Act, which categorises them into two groups: specialised or technical workers (white-collar) and those primarily engaged in manual labour (blue-collar).

For domestic workers, distinctions under the Labor Standards Act are based on the nature of the employment contracts, distinguishing between definite- and indefinite-term contracts. Additionally, Taiwan recognises apprenticeships, which are regulated separately.

1.2 Employment Contracts

Taiwan's labour law recognises two main types of employment contracts: indefinite and definite. Definite-term contracts are restricted to specific circumstances, such as temporary, short-term and seasonal contracts, as well as to particular project engagements as stipulated by Article 9 of the Labor Standards Act. The maximum durations for these contracts are as follows: up to six months for temporary or short-term, nine months for seasonal and over one year for project-specific contracts; the latter requires prior notification to the appropriate authority.

Although a written employment contract is not universally mandated in Taiwan, it is required for appren-

tices as per Article 65 of the Labor Standards Act. Despite this, it is advisable to formalise all employment agreements in writing to ensure clarity and legal compliance. Article 7 of the Enforcement Rules of the Labor Standards Act recommends that employment contracts include key elements such as:

- job description and workplace;
- working hours, breaks and rotational shifts;
- salary details, including payment methods and timing;
- contract terms, termination conditions and retirement policies;
- benefits including severance, pension and bonuses;
- worker responsibilities for expenses;
- safety, health and welfare policies;
- labour training;
- disciplinary and reward systems; and
- other relevant rights and obligations of employees and employers.

1.3 Working Hours

Under the Labor Standards Act, the maximum allowable working hours are 8 hours per day and 40 hours per week (Article 30). Overtime is permitted but cannot exceed 12 hours in a single day or 46 hours per month (Article 32). For every four consecutive hours worked, employees are entitled to a minimum break of 30 minutes (Article 35). Additionally, employees should receive one regular day off and one rest day off every seven days (Article 36), and they are entitled to annual paid leave (Article 38).

The Ministry of Labor also provides for flexible work schedules, allowing two-, four- and eight-week flexible working periods for eligible industries, thereby facilitating a more adaptable employment environment.

Part-time employment contracts are subject to the same labour rights as full-time contracts, with specific adaptations to account for reduced working hours as outlined in the “Guidelines for Hiring Part-time Workers”.

Overtime provisions are also governed by the Labor Standards Act, which integrates comprehensive regulations to ensure fair compensation and proper working conditions for all employees.

1.4 Compensation

In accordance with Article 21 of the Labor Standards Act, wages are to be negotiated between the employer and employee but must not fall below the minimum wage. The minimum wage covers remuneration earned during “normal working hours” and excludes overtime payments and bonuses. Notably, Taiwan does not guarantee a 13th-month salary, and there is no specific legislation solely dedicated to setting the minimum wage.

Currently, the Basic Wage Deliberation Committee, initiated by the Ministry of Labor, typically convenes in the third quarter of each year to discuss potential adjustments to the minimum wage.

The Ministry of Labor of Taiwan has recently prepared a draft Minimum Wage Act encompassing 19 articles. This draft outlines the creation of a “Deliberation Council” tasked with holding regular meetings and defines “deliberation reference indicators” to ensure a comprehensive decision-making process regarding minimum wage adjustments.

1.5 Other Employment Terms

Vacation and Leave Entitlements

Employees in Taiwan are entitled to various forms of paid and unpaid leave under multiple legislative frameworks, including the Labor Standards Act, the Regulations of Leave-Taking of Workers and the Gen-

der Equality in Employment Act. The provisions for leave include:

- wedding leave – eight days with full pay;
- bereavement leave – three to eight days with full pay, depending on the relationship to the deceased;
- sickness leave – up to 30 days annually at up to half pay;
- personal leave – 14 days per year without pay;
- military/public leave – full pay (duration not limited);
- menstruation leave – one day per month at half pay (up to three days per year);
- maternity leave – eight weeks, with the pay varying depending on the length of service;
- miscarriage leave – four weeks for pregnancies over three months, one week for pregnancies of two months and above and five days for pregnancies less than two months, with full pay if the employee has been employed for over six months (otherwise, 50% pay);
- pregnancy check-up leave – seven days with full pay;
- pregnancy check-up accompaniment and paternity leave – seven days with full pay;
- parental leave – up to two years until the child reaches three years of age, without employer pay but eligible for an allowance; and
- family care leave – seven days per year, counted within personal leave, without pay.

Overtime Compensation

Employees are generally entitled to overtime pay under the Labor Standards Act for rest-day overtime, regular leave overtime and holiday overtime. Employers must compensate employees for extended work hours as follows.

- Rest-day overtime:
 - (a) for the first two hours, payment is one-third above the normal hourly wage;
 - (b) for two to eight hours, payment increases to two-thirds above the normal hourly wage; and
 - (c) for eight to 12 hours, payment escalates to one- and two-thirds above the normal hourly wage.
- Regular leave overtime:

- (a) work on regular leave is compensated for at least eight hours; and
- (b) overtime beyond eight hours on regular leave is paid at double the rate.
- Public holidays overtime:
 - (a) for up to eight hours, pay is equivalent to eight hours at the normal hourly wage;
 - (b) for eight to ten hours, pay increases by one-third of the normal hourly wage; and
 - (c) for ten to twelve hours, pay increases by two-thirds of the normal hourly wage.

Confidentiality and Liability

Regarding confidentiality and non-disparagement, Taiwanese labour law does not specifically mandate these requirements; instead, they are typically governed through employment contract terms.

However, if an employer's confidential information qualifies as a trade secret protected by appropriate confidentiality measures, employees are prohibited from disclosing such information under the Trade Secrets Act.

2. Restrictive Covenants

2.1 Non-Competes

In Taiwan, the Labor Standards Act outlines specific conditions under which post-termination non-compete covenants are considered valid and enforceable. These covenants must protect legitimate business interests, particularly concerning employees privy to trade secrets, and must be reasonable in terms of duration, geographical scope and the nature of the restricted activities. Additionally, there is a requirement for employers to provide reasonable compensation for employees who adhere to these restrictions after employment. The enforceable duration for non-compete clauses is capped at two years.

Pursuant to Article 7-3 of the Enforcement Rules of the Labor Standards Act, the enforceability of non-compete clauses also hinges on providing “reasonable compensation” during the non-compete period. Requirements for meeting the definition of reasonable compensation include:

- the monthly compensation must not be less than 50% of the employee's average monthly wage at the time of resignation;
- the compensation should be adequate to support the employee during the non-compete period;
- the compensation should equate to the losses incurred by the employee due to the restrictions regarding the period, area and scope of occupational activities, as well as prospective employment limitations; and
- other relevant factors that may affect the reasonableness of the compensation should be considered.

2.2 Non-Solicits

Taiwan's labour law does not explicitly regulate non-solicitation covenants; thus, the enforceability and validity of restrictions against soliciting customers, employees or suppliers post-employment are not specifically addressed.

However, as a best practice, it is generally advisable to include non-solicitation clauses in employment contracts to safeguard business interests without statutory regulation.

3. Data Privacy

3.1 Data Privacy Law and Employment

Taiwan's Personal Data Protection Act grants employees specific rights concerning their personal data that are irrevocable and cannot be contractually limited. These rights ensure the employees' control over their personal information and include:

- the right to inquire about and review personal data held by the employer;
- the right to request copies of their personal data;
- the right to supplement or correct any inaccuracies found in their personal data;
- the right to demand a halt in the collection, processing or use of their personal data by the employer; and
- the right to request the deletion of their personal data from the employer's records.

These provisions are designed to protect the privacy and integrity of employee data and ensure that employers handle personal information responsibly and transparently.

4. Foreign Workers

4.1 Limitations on Foreign Workers

General Rules

The employment of foreign workers in Taiwan is governed by Articles 42 to 62 of the Employment Service Act and the Regulations Governing Visiting, Residency, and Permanent Residency of Aliens. These laws require employers to obtain employment permits for foreign workers, specify the necessary documentation, define permissible job categories and establish the qualifications required for both employers and employees. The validity period of the employment permit is also stipulated within these regulations.

Employers who hire foreign workers without the requisite authorisation are subject to administrative fines and may face criminal charges, as outlined in Articles 63 and 68 of the Employment Service Act.

Visas

While Taiwan does not impose numerical limits on most short-term visas, there is a specific cap for foreign professionals seeking employment: only 1,000 six-month employment-seeking visas are issued annually under Article 11 of the Act for the Recruitment and Employment of Foreign Professionals. This quota is enforced by directives from the Ministry of Foreign Affairs and the Ministry of the Interior.

Spouses

Spouses and children of foreign workers are eligible to apply for dependent residency; however, this status does not automatically grant them the right to work. Spouses desiring to work must obtain their own work permits under the guidelines set forth in Articles 42 to 62 of the Employment Service Act, as per the Immigration Act and the Regulations Governing Visiting, Residency, and Permanent Residency of Aliens.

This ensures that all foreign workers, including spouses of authorised workers, meet local employment regulations before they can commence employment.

Resident Labour Market Test

There is no requirement for a labour market test in Taiwan as a prerequisite for employers to hire foreign workers, or for the issuance of short- or long-term visas.

4.2 Registration Requirements for Foreign Workers

In Taiwan, employers must obtain authorisation from the central competent authority before hiring foreign workers, except under special regulations. This involves a review and approval process by the Ministry of Labor, which must be completed before the foreign professional can commence employment. Each employment permit application for foreign professionals can be granted for up to three years, with the possibility of renewal without limitation on the number of extensions. If the foreign professional meets the criteria for specific talents, the permit can be extended for up to five years per application.

Most foreign workers must be hired by an employer and sign an employment contract, accompanied by the necessary documentation to apply for a “Work Permit for Foreign Professionals”.

Notably, foreign individuals can also apply directly to the Ministry of the Interior for an Employment Gold Card, which allows them to engage in professional work once approved by the Ministry of Labor after a joint review of their qualifications.

5. New Work

5.1 Mobile Work

Taiwan currently lacks specific legislation for mobile work, except for guidelines issued during the COVID-19 pandemic by the Occupational Safety and Health Administration. These guidelines, titled “Reference Guidelines for Home Office Occupational Safety and Health”, require employers to identify potential hazards in the home office environment, conduct risk assessments and implement appropriate con-

trol measures within a reasonably practicable scope. Employers must also pay attention to the mental and physical health of home workers.

Regarding data privacy, mobile work must adhere to the provisions of the Personal Data Protection Act concerning the collection, processing and use of personal data by non-governmental agencies.

5.2 Sabbaticals

Taiwanese law does not provide specific regulations regarding sabbatical leave. This type of leave is typically not recognised formally within Taiwan's regulatory framework, leaving it to the discretion of individual employers to offer sabbatical options as part of their employment policies based on internal company rules or mutual agreements with employees.

5.3 Other New Manifestations

As the concept of “new work” evolves, one of the notable trends is desk sharing in co-working spaces, which reflects a shift towards more flexible and collaborative, and less permanently assigned, work environments. This approach offers various benefits such as increased flexibility, reduced company overheads and opportunities for networking. However, it also brings challenges related to data security and personal privacy.

In co-working and desk-sharing settings, the lack of permanent personal workspaces complicates the safeguarding of sensitive information. Companies must implement robust data security policies that address:

- physical document security – ensuring that sensitive paperwork is securely stored and not left untended on shared desks;
- digital data protection – utilising secure networks for data transmission, employing strong encryption and ensuring that digital devices are protected against unauthorised access;
- confidentiality in open environments – training employees on the importance of maintaining confidentiality when discussing sensitive matters and using privacy screens and designated “quiet zones” for confidential discussions; and
- adapting company policies for flexible workplaces.

Organisations adopting new work models like desk sharing should revise their operational policies to address these challenges. Policies should clearly define expectations for data protection and outline employee responsibilities in shared work environments. Additionally, implementing regular training sessions on data privacy and security can help mitigate risks associated with mobile and flexible work settings.

6. Collective Relations

6.1 Unions

Foundational Role and Legal Framework

Unions in Taiwan are pivotal organisations formed under democratic principles aimed at upholding and improving the labour conditions and economic status of workers. The primary legislative framework governing the formation and operation of unions is the Labor Union Act, which explicitly affirms every worker's right to organise and join unions. These rights are essential as they empower workers to collectively negotiate better working conditions and protect their employment rights.

Types of Unions

According to Article 6 (1) of the Taiwan Labor Union Act, unions can be categorised into three types: “enterprise unions”, “occupational unions” and “industrial unions”. This classification helps tailor union activities to the specific needs of different sectors and workplaces.

Fundamental Labour Rights

The “three rights of labour”, namely the rights to unionise, negotiate collectively and dispute collectively, are fundamental collective rights aimed at improving labour conditions and enhancing social and economic status. These rights are indivisible and closely inter-related, with the right to unionise being particularly crucial as it forms the foundation for collective action and voice.

Collective Bargaining and Dispute Resolution

Unions represent their members in collective bargaining with employers to enhance labour conditions and protect employment rights. Should negotiations fail,

the Labor Union Act allows workers to legally strike or engage in collective dispute actions to compel employers to agree to the conditions proposed by the union.

Role and Importance of Unions

Unions are voluntary organisations for workers that embody the right to free association, which is a special and important human right and a core labour standard crucial for supporting democratic and legal order. Additionally, unions play a unique role as a bridge in establishing stable and harmonious labour relations. The Labor Union Act underscores the purpose of union formation to promote worker solidarity, elevate their status and improve their living conditions, thereby acting as a vital component in the social and economic development of Taiwan.

6.2 Employee Representative Bodies Formation and Legal Rights

In Taiwan, every worker has the right to organise and join unions, as stipulated by Article 4 of the Labor Union Act. Furthermore, Article 11 of the same Act requires a union to initially be formed by at least 30 workers. These workers must organise a preparatory committee, which is responsible for conducting public membership drives, drafting statutes and convening an inaugural meeting. The committee is then required to submit the necessary documentation, including statutes and member directories, to the local competent authority within 30 days after the union's establishment meeting for official registration.

If the union is organised on a national scale, registration must be sought directly from the central competent authority, namely the Ministry of Labor.

Role in Collective Bargaining

These representative bodies play a crucial role in the collective bargaining process, negotiating on behalf of all members to enhance labour conditions and protect employment rights.

Should negotiations fail, the law empowers workers to legally strike or initiate collective dispute actions to enforce the conditions proposed by the union. This process is foundational in maintaining fair labour prac-

tices and protecting worker rights under Taiwanese law.

6.3 Collective Bargaining Agreements Legal Framework and Implementation

A collective bargaining agreement in Taiwan is a formal written contract negotiated between an employer (or an employer's organisation) and a union established under the Labor Union Act. The agreement is structured to manage labour relations and related matters, conforming to the procedural guidelines outlined in the Collective Agreement Act.

Content and Binding Nature

The potential contents of these agreements are comprehensive, including labour conditions like wages, work hours, allowances and safety, as well as organisational matters such as union operations and enterprise facilities. Article 12 of the Collective Agreement Act provides a detailed list of negotiable items that can be included in these agreements.

Ratification Process

According to Article 9 of the Collective Agreement Act, for an agreement to be effective, it must be ratified either by a majority vote at a general or representative assembly of the union or employer group or through written consent from three-quarters of all members.

If the collective bargaining agreement is not ratified according to these stipulations, it lacks legal force until the required approval process is completed. This ensures that all agreements genuinely represent the interests of the members and contribute positively to the labour management relationship, fostering a stable and harmonious work environment.

7. Termination

7.1 Grounds for Termination Requirements for Dismissal and Procedures Based on Grounds for Termination

Employers must adhere to a fair process before terminating an employee, which varies based on the specific grounds for dismissal. The process must include severance pay, reporting the dismissal to competent

authorities and complying with the minimum advance notice period.

Statutory Grounds for Termination

The Labor Standards Act outlines specific conditions under which employment can be terminated, as follows.

Article 11

Termination with advance notice is required for reasons such as operational adjustments or financial difficulties. Specific grounds include business suspension or transfer, operational losses, force majeure events lasting over one month, changes in the nature of business requiring fewer employees and the clear inability of an employee to meet performance expectations.

Article 12

This allows immediate termination without notice due to employee misconduct or other specific severe conditions.

Procedural Requirements

Termination procedures are specified under Articles 11, 13 and 20 of the Labor Standards Act, along with Article 33 of the Employment Service Act, which mandates the following:

- notification to authorities – employers must notify local competent authorities and public employment service institutions ten days before the employee's last working day, detailing necessary personal and job-related information;
- exception for force majeure – in cases of force majeure, the notification period is within three days from the termination date; and
- involuntary separation certificate – employers must issue an involuntary separation certificate to dismissed employees.

Collective Redundancies

The Act for Worker Protection of Mass Redundancy regulates mass terminations, applying when certain criteria are met:

- small entities – a site with fewer than 30 employees intending to lay off more than ten employees within 60 days;

- medium entities – a site with 30 to 200 employees planning to lay off more than one-third of its workforce within 60 days, or more than 20 employees in one day;
- large entities – a site with 200 to 500 employees aiming to lay off more than one-fourth of its workforce within 60 days, or more than 50 employees in one day;
- very large entities – a site with over 500 employees planning to lay off more than one-fifth of its workforce within 60 days, or more than 80 employees in one day; and
- extensive layoffs – any business entity intending to lay off over 200 employees within 60 days or more than 100 employees in one day.

For collective redundancies, the employer must create a mass redundancy plan and provide written notice at least 60 days prior to the proposed termination date to the local labour authority, the labour representatives from the Labor Management Committee and the employees to be laid off.

Employees affected by collective redundancies are entitled to advance notice or pay in lieu of notice, severance pay and any outstanding bonuses or payments, similar to the conditions in unilateral terminations.

7.2 Notice Periods

Required Notice Periods and Formalities

Under the Labor Standards Act in Taiwan, employers are required to provide advance notice prior to terminating an employment contract. The length of the notice period depends on the employee's duration of continuous service:

- less than one year but more than three months – a minimum of ten days' notice;
- more than one year but less than three years – a 20-day notice period; and
- more than three years of service – a 30-day notice period.

During the notice period, employees are entitled to take up to two days off per week to seek new employment, with full pay for these days. Employers may alternatively choose to offer pay in lieu of notice.

While notice does not necessarily have to be in writing, it is highly recommended to provide written notification to avoid any misunderstandings or disputes.

Severance Pay Requirements

Severance pay is mandated under specific conditions, as outlined in the Labor Standards Act and the Labor Pension Act. The calculation of severance pay depends on whether the employment falls under the old pension system or the new pension system, as follows.

- Old pension system (Labor Standards Act pension system):
 - (a) employees receive one month's average salary for each year of continuous service; and
 - (b) for periods of service less than a year, severance pay is calculated on a pro rata basis, with periods less than a month considered as a full month.
- New pension system (Labor Pension Act pension system):
 - (a) employees are entitled to 0.5 month's average salary for each year of service, with a cap at six months' average salary; and
 - (b) severance for service periods less than a year is also calculated pro rata, subject to the six months' average salary cap.

Procedure and External Authorisation

The formalities for termination involve notifying the employee in advance according to the stipulated notice periods. There is no specific requirement for external advice or authorisation for the termination process under Taiwan labour law. However, ensuring compliance with all legal provisions, including appropriate documentation and adherence to severance pay regulations, is crucial for the lawful termination of employment contracts. This structured approach helps protect both the employer and the employee from potential legal complications.

7.3 Dismissal for (Serious) Cause

Definition and Grounds for Summary Dismissal

Summary dismissal, or dismissal for serious cause, allows an employer to terminate an employment contract immediately, without the requirement of a notice period, due to severe misconduct or specific situa-

tions that necessitate such immediate action. According to Article 12 of the Labor Standards Act, grounds for summary dismissal include:

- misrepresentation – providing false information at the time of the contract signing that leads to employer harm;
- violent or insulting behaviour – acts of violence or severe insults directed at the employer, their family, agents or coworkers;
- criminal conviction – if an employee is convicted and receives a non-suspended temporary imprisonment in a final judgment;
- breach of contract or work rules – serious violations of the employment agreement or workplace regulations;
- deliberate damage or disclosure – intentionally causing damage to the employer's property or revealing confidential information resulting in employer harm; and
- unauthorised absences – absence from work without a valid reason on three consecutive days or on six days within a month.

Procedure and Formalities

When proceeding with a summary dismissal, the employer must ensure that the reasons for termination fall strictly under the categories listed in Article 12 of the Labor Standards Act. The dismissal process involves:

- documentation – thoroughly documenting the reasons and evidence supporting the dismissal decision, which should clearly match one of the valid grounds under Article 12;
- communication – communicating the decision to the employee, ideally in writing, to provide a clear record of the dismissal and its reasons; and
- immediate effect – the dismissal takes effect immediately, with the employee ceasing work and obligations to the employer from the date of dismissal.

Consequences of Summary Dismissal

Aspects of summary dismissal include the following:

- no notice period required – employers are not obligated to provide a notice period when terminating an employee for serious cause under Article 12;

- no severance pay – the employee is not entitled to severance payment when dismissed for serious cause as defined in Article 12; and
- legal protection – employers must be cautious and ensure the dismissal is justifiable under the stipulated conditions to avoid legal challenges or claims of unfair dismissal from the employee.

7.4 Termination Agreements

Permissibility and General Practices

Termination agreements are permissible in Taiwan. While Taiwanese law does not mandate specific terms to be included in termination agreements, it is commonly recommended to specify the amount of severance payment and to establish the agreement as a final settlement. This means that, post-agreement, neither the employer nor the employee can make any further civil or criminal legal claims against each other.

Procedures and Formalities

Employers are required to notify local competent authorities and public employment service institutions ten days before the employee's last working day. This notification should include details such as the dismissed employee's name, gender, age, address, phone number and job position, the reason for layoff and the necessity for employment counselling services.

Statutory Requirements for Enforceable Releases

According to Article 71 of the Civil Code, employees generally cannot waive statutory and contractual rights to potential employment claims in advance. This provision ensures that legal acts contravening mandatory or prohibitive statutes are void. Specifically, any pre-emptive relinquishment of rights to severance payments and pensions before these rights accrue is considered invalid.

Post-termination agreements where an employee consents to waive their rights to severance pay and pensions may hold validity provided these claims have already materialised. This acknowledges that such rights, once accrued, become independent rights that could theoretically be waived. Such waivers, agreed upon after employment has expired or been terminated, reflect the principle of private autonomy, allowing

agreements on severance and pensions even if they result in lower compensation than legally prescribed.

Judicial Scrutiny and Fairness

The validity of these post-termination waivers, especially in cases where employees forgo their claims entirely, may still be subject to judicial scrutiny. Courts often examine whether such agreements were made under duress or deception to safeguard the interests of employees. Therefore, while post-termination waivers are theoretically permissible, they must not exploit the employee's position, ensuring that any consideration given (economic or otherwise) is fair and freely agreed upon without coercion or fraud.

In summary, while termination agreements are allowed in Taiwan, they must be carefully crafted to ensure they do not contravene statutory protections, particularly regarding severance and pension rights.

7.5 Protected Categories of Employee

Specific Protections Against Dismissal

In Taiwan, the law provides specific protections against the dismissal of employees who belong to certain vulnerable categories or who are involved in particular activities. It is unlawful to dismiss an employee for reasons such as:

- pregnancy and maternity – employees are protected from dismissal due to pregnancy, during maternity leave and post-childbirth;
- occupational accidents – employees who suffer work-related injuries or illnesses are safeguarded from being dismissed while they are recuperating;
- participation in labour-management dispute resolution – this includes involvement in mediation, arbitration or any decisions arising from such disputes;
- union membership and activities – employees cannot be dismissed for joining a labour union, participating in union activities or engaging in lawful union-organised events;
- legal actions or complaints – protection is extended to employees who take lawful legal actions or lodge complaints against their employers; and
- whistle-blowing – employees who report or expose any illegal activities within the organisation are protected from retaliation, including dismissal.

Legislative Framework

Acts in the legislative framework include the following.

- Gender Equality in Employment Act (Article 11) – this act explicitly prohibits any work rules, labour contracts or group agreements that require employees to resign or take unpaid leave due to marriage, pregnancy, childbirth or childcare responsibilities. Any violations of this provision render the stipulations or agreements invalid, and any resultant terminations are deemed without effect.
- Labor Standards Act (Article 13) – this provision protects employees who are on leave due to work-related injuries or are receiving medical treatment as specified under the Act. Employers are prohibited from terminating such employees unless the business is unable to continue due to extraordinary circumstances, such as natural disasters. Even in these cases, termination requires prior approval from the competent authorities.

Implications for Employee Representatives

Employee representatives, particularly those involved in union activities or labour management dispute resolution, are afforded additional protections to ensure they can perform their representative roles without fear of reprisal or dismissal. This safeguard is crucial for maintaining fair and just labour practices, as it allows representatives to advocate effectively for the rights and interests of their constituents.

These protections are designed not only to safeguard the rights of employees during periods of vulnerability but also to ensure that employees are not discriminated against or unfairly dismissed for upholding their rights or fulfilling their responsibilities in workplace relations.

8. Disputes

8.1 Wrongful Dismissal

Grounds for a Wrongful Dismissal Claim

Wrongful dismissal occurs when an employer terminates an employee without adhering to the legal grounds stipulated under the Labor Standards Act (Articles 11 and 12) or specific contractual terms agreed upon in the employment agreement, provided

these terms do not contravene existing laws. Grounds for a wrongful dismissal claim include:

- dismissal without meeting the statutory reasons for layoffs (economic or operational) or disciplinary dismissals as defined in the law; and
- termination that violates the agreed terms of the employment contract that are themselves lawful.

Consequences of a Wrongful Dismissal Claim

Employees who believe they have been wrongfully dismissed have the right to seek mediation through local government employment centres or to file a civil lawsuit. Most Taiwanese courts have specialised divisions handling labour-related cases to facilitate this process. If the court finds the dismissal to have been unlawful, the consequences for the employer can include:

- payment of the employee's salary for the period they were unemployed due to wrongful dismissal;
- compensation for any loss or damages suffered by the employee as a result of the dismissal; and
- potential reinstatement of the employee to their former position.

Overall, a successful wrongful dismissal claim may entitle the employee to accrued salary, reasonable compensation and possible reinstatement.

8.2 Anti-Discrimination

Grounds for Anti-discrimination Claims

Taiwanese labour law prohibits discrimination on various grounds including race, class, language, thoughts, religion, political affiliation, place of origin, gender, sexual orientation, age, marital status, appearance, features, physical or mental disability, astrological sign, blood type or past union membership.

Discrimination can relate to any aspect of employment including hiring, firing, training, benefits, pay and termination.

Burden of Proof

In Taiwan, the initial burden of demonstrating the existence of discriminatory conduct typically falls on the complainant. However, the burden of proving that discrimination did not occur rests with the employer.

This means the employee must initially show plausible evidence of discrimination, after which the employer must demonstrate that their actions were not discriminatory.

Damages and Relief for Discrimination Claims

If an employer is found to have discriminated against an employee, they may face fines ranging from NTD300,000 to NTD1.5 million. Employees can file complaints with local government offices or labour bureaus. Furthermore, any retaliatory actions by the employer, such as dismissal or salary reduction in response to complaints, are deemed invalid under the Labor Standards Act.

8.3 Digitalisation

In Taiwan, the process for handling employment disputes remains primarily traditional, with physical court appearances being required. Despite the increasing global trend towards digitalisation in judicial processes, Taiwan's legislation currently does not support conducting employment dispute hearings via videoconferencing as a standard practice. Exceptions can be made, however, if a judge or mediation committee specifically agrees to allow videoconferencing based on the unique circumstances of a case.

This approach reflects a cautious stance towards the digitalisation of court proceedings, particularly in employment disputes where personal interactions and direct negotiations can be crucial. As digital tools and platforms become more integrated into various legal processes globally, there may be future revisions in Taiwan to this policy to allow greater flexibility and accessibility in handling employment disputes digitally.

9. Dispute Resolution

9.1 Litigation

Specialised Employment Forums

Taiwan has established specialised procedures for handling employment disputes, including alternative dispute resolution mechanisms and designated courts.

Alternative Dispute Resolution for Employment Matters

The Department of Labor plays a crucial role in mediating employment disputes before they escalate to formal litigation; how this process works is detailed in the following.

- Initial mediation by the Department of Labor:
 - (a) the Department conducts a basic investigation of the evidence provided by both parties;
 - (b) mediation is facilitated by a single mediator and is free of charge; and
 - (c) the process typically lasts up to 20 days but, if referred to a mediation committee, can extend from 42 to 49 days.
- Court mediation and litigation:
 - (a) if mediation through the Department of Labor fails, the aggrieved party may file a lawsuit at the District Court;
 - (b) before the trial commences, the judge will attempt a mediation period;
 - (c) under the Labor Incident Act, mediation is mandated before trial, and one of the three labour mediation committee members will be a judge who may later oversee the trial if mediation fails;
 - (d) court-mandated mediation may incur a fee depending on the nature of the claim (proprietary or non-proprietary); and
 - (e) according to the Labor Incident Act, court-mandated mediation should conclude within three months; if the case proceeds to trial, the first instance trial should be concluded within six months.

Class Action Claims

In the realm of employment law, class or collective actions are permitted, primarily facilitated through labour unions. Key points include the following.

- Legal framework:
 - (a) labour unions can initiate class action lawsuits on behalf of employees, as permitted by Article 44-1 of the Civil Procedure Act and Article 40 of the Labor Incident Act; and
 - (b) these provisions allow labour unions to represent their members collectively, providing a unified legal front in disputes affecting multiple

employees.

- Representation in court:

- (a) labour unions play a significant role as representatives in court for collective actions, enhancing the efficiency and effectiveness of the legal process by consolidating similar claims into a single proceeding.

This specialised approach to employment litigation and dispute resolution in Taiwan ensures that both individual and collective employment grievances are handled efficiently, with opportunities for resolution through mediation before escalating to more formal legal proceedings.

9.2 Alternative Dispute Resolution Possibility and Enforceability of Arbitration

In Taiwan, arbitration is indeed a viable method for resolving employment disputes outside of traditional court proceedings. This alternative dispute resolution mechanism is supported by the framework provided under the Act for Settlement of Labor-Management Disputes.

Procedure for Initiating Arbitration

According to Article 26 of the Act for Settlement of Labor-Management Disputes, the process for initiating arbitration requires the parties involved to prepare and submit a written application for arbitration to the competent authority. This submission must adhere to the specific procedures and requirements outlined in the Act, ensuring that all necessary documentation and details are properly presented.

Legal Force of Arbitration Decisions

Decisions made through arbitration in labour disputes carry the same legal force as final judgments made by courts. This equivalency means that:

- an arbitration award pertaining to adjustments in labour disputes is considered a court's judgment between the parties involved;
- if one of the parties is a union, the arbitration award is treated as a collective agreement between the parties; and
- if the parties reach a settlement during the arbitration process, this must be reported to the local government for record-keeping and is considered

as binding as a mediation agreement established through labour dispute mediation.

Pre-Dispute Arbitration Agreements

Regarding the enforceability of pre-dispute arbitration agreements, while the legal framework allows for arbitration, the specifics regarding the enforceability of such agreements before a dispute arises typically depend on the agreement's adherence to the legal standards set by the Act for Settlement of Labor-Management Disputes.

Employers and employees are encouraged to clearly define the terms and conditions of any arbitration agreement within the scope of this Act to ensure its enforceability.

In summary, arbitration serves as an effective and legally binding alternative to court litigation for resolving employment disputes in Taiwan, provided the involved parties adhere strictly to the legislative guidelines.

9.3 Costs

In Taiwan, the issue of covering legal costs, including attorney's fees, in labour disputes is regulated with specific provisions to aid employees under certain conditions.

Court Fees

Employees who meet specified criteria can apply for reduced court fees, providing financial relief during the process of seeking justice. This concession is designed to make the legal process more accessible to employees who might otherwise be deterred by the costs associated with litigation.

Attorney's Fees

As per the current legal framework in Taiwan, the following applies.

- The prevailing party in a labour dispute can request the losing party to cover the attorney's fees, but this is generally limited to the costs incurred during the third (final) instance in the litigation process. This provision ensures that the financial burden of prolonged legal disputes can be mitigated for

the successful party at the culmination of the legal proceedings.

- Additionally, employees who meet certain conditions may apply for a government subsidy to cover the attorney's fees. This support aims to reduce the financial barriers that might prevent workers from seeking legal redress in employment disputes.

These measures reflect Taiwan's approach to balancing the financial aspects of legal disputes, ensuring that employees have the support necessary to assert their rights without being overwhelmed by the potential costs.

THAILAND



Law and Practice

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Baker McKenzie (Bangkok) is a Band 1 Firm for employment in Thailand by Chambers Asia Pacific 2021-2025. Its employment and compensation practice in Thailand consists of more than 10 members. The size and diverse expertise of the firm's team enables it to manage all of its clients' employment needs, from day-to-day human resources requirements to critical business change and restructuring. Baker McKenzie Bangkok represents employers in collective bargaining and works council negotiations, and also develops robust industrial relations strategies. The firm

guides employers through all aspects of the litigation process. Baker McKenzie is the only law firm to be ranked Band 1 by Chambers Global for Employment for 15 consecutive years. With 650+ employment lawyers and professionals in over 70 offices across more than 40 jurisdictions, working closely with tax, IP, antitrust, compliance and litigation, the firm draws upon resources in its network to provide timely and integrated solutions to all your employment needs, wherever you are.

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1. Employment Terms

1.1 Employee Status

There is no legal distinction between blue-collar and white-collar workers under Thai labour laws; both receive the same treatment and protection under the Labour Protection Act B.E. 2541 (1998) (LPA).

However, there are requirements relating to outsourced employees under the LPA, where a business operator could legally be deemed an employer of such outsourced workers if they require another person to dispatch such workers to perform any work within their manufacturing process or business operation under their responsibility.

1.2 Employment Contracts

Employees may be hired indefinitely or for a fixed-term period, and there is no legal requirement for the contract for either to be in writing.

The main differences between these two types of contracts are as follows.

Indefinite-Term Employment Contract

For this type of contract, an employer or an employee may terminate the agreement at any time by giving advance notice to the other party of at least one pay period as legally required, or a longer period if the parties agree otherwise. If the employer fails to provide notice in advance as legally required, they must make payment in lieu of the shortfall of the notice period required.

Such employment contracts may simply specify the term to be indefinite, subject to termination by either party through providing notice in advance, and in reliance on grounds for termination.

Fixed-Term Employment Contract

Conversely, a fixed-term employment contract automatically terminates upon the agreed expiry without requiring advance notice.

This type of contract must specify the exact date or time period when the employment term will end. They should not include clauses for renewal or early termination, as Thai labour courts interpret such provisions

as changing the nature of the contract from a fixed term to an indefinite one.

1.3 Working Hours

The employer is legally required to specify the start and end times of work in a day. Working hours must not generally exceed eight hours per day and 48 hours per week, except for certain hazardous works prescribed under the laws, where the maximum working hours are capped at seven hours per day and 42 hours per week.

There is a legal exception if the employer cannot specify the start and end time of work due to the nature or conditions of the work; such work can be exempt from the exact start and end times for working hours, as long as they do not exceed eight hours per day and 48 hours per week.

The LPA does not provide a definition or distinction for part-time or full-time contracts. All employees are treated similarly under Thai labour laws, regardless of their status as part-time or full-time employees.

Overtime work is legally defined as working beyond the normal working hours. In general, the employee's prior consent is required each time they are required to work overtime unless it is an emergency case, or unless the work is continuous and the stoppage will cause damage to that work. In any case, the total overtime working hours and holiday work shall not exceed 36 hours per week.

The employee is entitled to overtime pay at 1.5 times the normal hourly wage for any overtime worked. For working overtime on a holiday, the rate is three times the normal overtime rate.

1.4 Compensation

Under Thai labour law, the employer must pay at least the minimum daily wage rate announced by the Wage Committee from time to time, regardless of the number of hours worked in each day. The Wage Committee consists of representatives from the government, employers and employees, and generally announces the minimum wage for each province or a group of provinces.

13th-month payment and bonuses are not statutory payments under the LPA, and it is up to the employer to prescribe terms and conditions as it wishes or as agreed with the employees as part of their employment terms and conditions.

1.5 Other Employment Terms

Statutory Holidays

Under the LPA, there are three types of holidays.

- **Weekly holiday:** the employer must provide at least one weekly holiday per week. The interval between weekly holidays shall not be more than six days, and the employer and the employee may agree in advance to fix any day as a weekly holiday.
- **Traditional holiday:** the employer must provide at least 13 traditional holidays per year, including National Labour Day, which the employer must announce in advance. The employer must fix the traditional holidays according to the official annual holidays and religious or local holidays.
- **Annual holidays:** the employer must provide annual holidays of not less than six working days per year for any employee who has worked for an uninterrupted period of one year. The annual holidays can be fixed in advance or as agreed by the employer and employee.

The employer and the employee may agree in advance to accumulate and postpone any annual holiday that has not yet been taken in a year to be included in the following year.

If an employee has not completed one year of service, the employer may set annual holidays for the employee on a pro rata basis.

During these holidays, the employee shall receive wages equivalent to a working day's wages. If the employee is required to work on these holidays, the employer must provide holiday pay or overtime work, if any.

Statutory Leaves

There are six statutory leaves under the LPA.

- **Sick leave:** An employee is entitled to take sick leave as long as they are truly injured or ill. The

employer will pay wages throughout leave, but for no more than 30 working days a year.

- **Maternity leave:** a female employee is entitled to take maternity leave of not more than 98 days for each pregnancy, inclusive of holidays during the period of leave. Pre-natal care is considered part of this leave. The employer will pay wages throughout leave, but for no more than 45 days for a pregnancy.
- **Sterilisation leave:** an employee is entitled to take leave for sterilisation and leave as a result of sterilisation for a determined period, and with a certificate issued by a first-class physician, with wage pay.
- **Business leave:** an employee is entitled to take leave for necessary business of not less than three working days per year, with wage pay.
- **Military service leave:** an employee is entitled to take leave for military service for inspection, military drilling or readiness testing under the law concerning military service. The employer must pay wages throughout leave, but for no more than 60 days a year.
- **Leave for training:** an employee shall be entitled to take leave for training or the development of their knowledge and skills in accordance with the rules and procedures prescribed in the Ministerial Regulations. As the law is silent on payment during this leave, it is up to the employer to allow the employee to take this leave with or without pay.

There are no statutory leaves for disability or childcare.

Confidentiality and Non-Disparagement Requirements

Thai labour law is silent on the obligations of confidentiality or non-disparagement. It is generally permissible for the employer and employee to agree on these obligations, including for the period after the cessation of employment.

The enforcement of these confidentiality clauses, in practice, could be somewhat challenging. One of the challenges is that it will be difficult for some employers to have sufficient evidence and witnesses to prove the employee's breach of confidentiality and to establish the extent of damages they suffer to claim compen-

sation due to the breach and the causal link between such damages and the breach.

Nonetheless, depending on the nature of the information and infringement by the employees involved, the employer may also rely on the protections and enforcements under the Trade Secrets Act B.E. 2545 (2002), the Computer Crime Act B.E. 2550 (2007) and the Copyright Act B.E. 2537 (1994), as well as criminal offences under the Penal Code (eg, offences relating to commerce and defamation).

2. Restrictive Covenants

2.1 Non-Competes

Similar to the confidentiality and non-disparagement requirements, restrictive covenants like non-compete clauses are generally valid and enforceable under Thai labour laws.

The Thai labour court has the authority to review whether the restraints placed on employees are fair, including any restrictions that apply after employment has ended. If the court finds these restraints to be unfair (such as if the geographical area covered is excessively broad or if the duration after employment termination is too long), it can choose to modify them. The court may enforce these restraints only to the extent it considers fair and reasonable for the employees, such as by reducing the post-termination period to what it deems appropriate.

Enforcement of Non-Compete Clauses

As these restrictions set bounds on an employee's rights and freedoms, the court is likely to interpret the scope of the application of these restrictions in a limited manner. Therefore, it is crucial for the employer to carefully draft the relevant contractual provisions to ensure that the scope of their application will cover the protections intended by these clauses, while ensuring that the scopes and restrictions are not too overtly restrictive, unfair and burdensome to the employee.

In practice, the enforcement of specific performance of the non-compete clause can be challenging, and the court rarely grants any enforcement on specific performance (eg, by ordering the employee to leave

the competitor) or injunctive relief. However, the court is more likely to award damages due to the employee's breach of these restrictive covenants if the employer can prove the existence of damages as well as the causal link between the breach and the damages it suffered.

2.2 Non-Solicits

Non-solicitation clauses are treated similarly to non-compete clauses; see **2.1 Non-competes**. The court is empowered to review whether these restraints are fair to employees. If the court thinks they are unfair to employees, it may exercise its discretion to render them enforceable to the extent it considers fair and reasonable to the employees.

3. Data Privacy

3.1 Data Privacy Law and Employment

The purposes of the Personal Data Protection Act B.E. 2562 (2019) (PDPA) are to protect individuals' personal data by imposing obligations on any data controller or processor collecting, disclosing, transferring and utilising personal data of a data owner.

The key legal requirements under the PDPA in the employment context include the following.

- Employers must limit the collection of personal data to lawful grounds and with the employee's prior consent, unless it falls under prescribed exceptions.
- A request for consent shall be explicitly made in a written statement or via electronic means, which must be separated from other content and must be easy to understand.
- There are exceptions where consent from employees is not required for the processing of their data (collecting, disclosing and utilising personal data), such as when the employer may rely on its necessity due to its legitimate interest or contractual obligations to process such personal data in compliance with the PDPA, among others.
- An employer shall collect, utilise or disclose personal data only for the purpose notified to the employee prior to or at the time of such collection, unless the employer has informed the employee of

the new purposes and has received the employee's consent to collect, use or disclose personal data for such purposes.

- A privacy notice must be given to the employees before or at the time the employer collects their personal data. The privacy notice must contain the information required under the PDPA – the purpose of data processing, the categories of data to be processed, the retention period, the contact person for PDPA matters, the rights of the employee as the data owner, etc.

4. Foreign Workers

4.1 Limitations on Foreign Workers

If an employer wishes to hire a foreign employee, a valid business visa and work permit must be obtained so that the foreign employee is able to stay and work in Thailand. Generally, a foreign employee will have to obtain an appropriate business visa from the Thai Embassy/Consulate of their home country, which permits them to stay in Thailand for work or business activities for 90 days. The foreign employee will then have to apply for and obtain a work permit from the competent authority in Thailand in order to be able to work in Thailand legally.

After obtaining the work permit, the foreign employee may apply to the competent immigration bureau for an extension of the permit to stay in Thailand for a period exceeding the initial 90 days permitted under the business visa above (eg, one year).

4.2 Registration Requirements for Foreign Workers

An employer that hires a foreign employee must notify a work permit official of their name, nationality and work description within 15 days from the date of hiring. When a foreign employee's employment ends, the employer must also notify a work permit official, including the reason for employment cessation, within 15 days from the employment cessation date.

Foreign employees must also be registered with the Social Security Fund, similar to Thai employees. They will also have to obtain a Tax ID from the Thai Revenue Department.

5. New Work

5.1 Mobile Work

In 2022, an amendment to the LPA was approved to facilitate the new way of working remotely. Under the newly amended LPA, an employer may agree to allow an employee to work from home or to work from anywhere, using information technology, for the benefit of the business and the promotion of quality of life for employees, or in cases of necessity.

This sort of agreement must be made in writing or in the form of electronic data that is accessible and reusable without altering the meaning. The agreement may include the following details:

- commencement and end date;
- normal working hours, rest periods and overtime;
- rules on overtime work, holiday work and leave;
- the scope of the work and the control of work by the employer; and
- obligations to procure and provide work equipment and tools, including expenses arising out of the work.

The amendment to the LPA also introduced the “right to disconnect” for employees when working remotely – ie, the employee has the right to refuse any communications with their employer, supervisors, chief or work inspector after the end of normal working hours, unless employees give written consent in advance.

There are no specific legal requirements for remote working, so the requirements under the Thai PDPA will continue to apply to both employers and employees working remotely.

Occupational Safety, Health and Environment

There has not yet been any specific occupational safety, health and environment legislation nor regulations dealing specifically with mobile work or remote working in Thailand.

However, under the Occupational Safety, Health and Environment Act B.E. 2554 (2011), an employer has a general obligation to arrange and maintain the establishment and its employees in safe and hygienic working conditions, and to support and promote the work

operation of employees in order to prevent them from harm to life, physique, mentality and health.

Moreover, an employee is entitled to receive compensation under the Workmen's Compensation Act B.E. 2537 (1994) if the injury or death is due to work in the course of protecting the interest of the employer, or complying with the commands of the employer, among others, regardless of their place of work.

Social security

The employer is required to register any remote-working employee with the Social Security Fund and make contributions to the fund similar to those of other regular employees.

5.2 Sabbaticals

There are no statutory sabbatical leaves under the LPA; the most similar concept is the annual holiday requirement. As noted in **1.5 Other Employment Terms**, the employer is required to provide at least six annual holidays per year to employees who have worked for an uninterrupted period of one year. The employer and the employee may agree in advance to accumulate and carry forward any unused annual holiday to the following years.

Some employers may allow employees to take extended breaks from work in the form of unpaid leave for a specific period, or they may offer paid sabbatical leave in addition to the annual holidays as part of their benefits package. If an employer provides such leaves, there are no restrictions, as these leaves are considered part of the non-statutory benefits. Consequently, the employer has the flexibility to set the requirements and duration of the leave as they see fit.

5.3 Other New Manifestations

There are some interesting new developments on the nature of work in Thailand, including the following.

- Fully remote, hybrid or flexible work arrangements are becoming the norm for office workers in Thailand, as many employers allow employees to work remotely either fully or in a hybrid manner, where a certain number of days in a week will be remote and the rest will be attending the office to work as usual. Certain employers also consider desk shar-

ing to accommodate the shrinking size of office space as more fully remote, hybrid or flexible work arrangements are being adopted.

- An increase in cross-border personnel engagement is due to the rapid adoption of information technology, allowing for more effective and efficient ways to work remotely. However, overseas employers should still consider legal issues in engaging personnel in Thailand from abroad, including:
 - (a) appropriate and legally permissible forms of engagement;
 - (b) work permit and visa requirements;
 - (c) restrictions on foreign business activities in Thailand; and
 - (d) tax issues in connection with such cross-border personnel engagement.
- Employers in various industries are seeking to utilise AI better. Work and employee regulations may have to be adopted to regulate the use of AI by employees to perform their work, particularly to address risks regarding intellectual property and confidentiality issues.
- Adoption of independent contractors is increasingly becoming more common. An independent contractor is an individual who operates independently or provides services to an organisation without being directly employed. This role can be described in various terms, such as consultant, freelancer, advisor, or independent contractor.

In this context, the relationship between an independent contractor and an organisation is governed by a contractor-hirer arrangement under a service or contractor agreement, rather than an employer-employee relationship under an employment agreement. The organisation is not obliged to provide most statutory employment protections and entitlements. However, regardless of the terms stated in the engagement or service agreement, there is a risk of misclassification. If a court determines that the actual working relationship resembles that of an employer and employee, the organisation may be subject to employment-related obligations.

6. Collective Relations

6.1 Unions

A labour union is an organisation with a separate legal personality formed voluntarily by at least ten qualified employees, which must be registered with the registrar under the Labour Relations Act B.E. 2518 (1975) (LRA). It could be formed either by employees of the same employer (house union) or by employees within the same industry, regardless of the number of employers (industrial union).

Under the LRA, a labour union mainly has duties and powers to demand, negotiate and acknowledge an award or enter into a collective bargaining agreement (CBA) with an employer or employer's association regarding the activities of its members, and to manage and carry out activities for the benefit of its members within the objectives of the labour union, among others.

6.2 Employee Representative Bodies

Labour Unions

Labour unions may be established by at least ten qualified employees under the same employer or within the same industry and registered with the registrar to become a juristic person under the LRA. As noted in **6.1 Unions**, labour unions have the authority to demand, negotiate and acknowledge an award or enter into a CBA with an employer or employer's association regarding the activities of its members, and to manage and carry out activities for the benefit of its members within the objectives of the labour union, among others.

Welfare Committee in the Establishment

In a workplace with 50 employees or more, the employer must arrange for the inception of a Welfare Committee in the Establishment, appointed by an election by employees in accordance with the LRA. The Welfare Committee in the Establishment shall have general duties on consultation with the employer to provide welfare to employees, among others.

An employer must hold a meeting with the Welfare Committee in the Establishment at least once every three months, or upon request by more than half of the

total number of committee members or by the labour union with an appropriate reason.

Employee Committee

An employee committee may be established voluntarily by employees in a place of business that has 50 or more employees by election or appointment from the labour union, or both, depending on the proportion of the members of the labour unions in the workplace, in accordance with the LRA. Employers must arrange for a meeting with the employee's committee at least once every three months, or upon request, to discuss welfare provisions or work regulations that would be beneficial to employers and employees, to consider complaints or to settle disputes in the workplace, among other purposes.

If there is an employee committee established under LRA, such a committee shall perform the same duties as the Welfare Committee in the Establishment.

Labour Federations

Two or more labour unions whose members are employees working for the same employer or in the same industry can jointly establish a labour federation to promote better relationships between labour unions and protect employees' interests.

6.3 Collective Bargaining Agreements

Under the LRA, a CBA is an agreement between employer and employee or between an employer's association and a labour union relating to conditions of employment – ie, working days and hours, wages, welfare, termination of employment, or other benefits relating to employment.

A CBA under the LRA must be done through the processes under the LRA, by either the employer or employees (or through their labour union) submitting a labour demand to the other party and going through the negotiation process until an agreement is reached. The agreed CBA must also be registered with the registrar under the LRA.

A CBA shall be effective for a term as agreed between the employer and employee, but shall not exceed a period of three years. If no term is specified in a CBA, such CBA shall be effective for one year from the

date such CBA is entered into. If the term of the CBA expires and there is no negotiation on such CBA, it shall be deemed to be applicable for one further year.

7. Termination

7.1 Grounds for Termination

Under Thai labour law, an employer can terminate an employee's position at any time and for any reason, provided that it complies with all legal requirements for such termination, including providing notice in advance, paying severance pay as required, etc.

However, the employer may also rely on the six statutory grounds under the LPA – eg, employment may be terminated if an employee commits a serious violation of the employer's lawful and fair order and regulations, without having to provide a termination notice in advance or pay severance pay.

The employer should have a justifiable reason to terminate its employees' contracts, in order to be able to defend itself against an unfair termination claim by a terminated employee (see **8.1 Wrongful Dismissal**).

No special rules are applied in the general case of collective redundancy. However, in the case of redundancy due to the improvement of the organisational structure, manufacturing process, sales or service resulting from the use of new machinery or a change of machinery or technology, the employer is required to give advance notice with the details on the effective date of termination, the reason for termination and a list of names of affected employees to the labour inspector and the terminated employees no less than 60 days before the effective date of termination. Failure to provide advance notice or to provide notice within the accepted timeframe will lead to the employer being liable to pay special severance pay in lieu of advance notice equivalent to the last 60 days of wages, in addition to the severance pay.

If an employer terminates an employee's position due to redundancy, and that employee has worked continuously for six years or more, the employer is required to provide a special severance payment in addition to the standard severance pay. This special payment will

be equal to the employee's last wage rate for 15 days for each full year of service beyond the initial six years. However, the total amount of this special severance pay cannot exceed the equivalent of the last wage rate for 360 days.

7.2 Notice Periods

For a general case of employment termination not due to any statutory termination grounds, the employer must comply with the following.

Notice Period

According to the LPA, an employee or employer who wishes to terminate an indefinite-term agreement must give no less than one pay period advance notice of termination in writing to the other party – ie, the terminating party must provide the other party notice on or before any payday to take effect on the next payday. The notice period can be longer if agreed otherwise by the employer and employee.

Please note that this pay period is not necessarily one month or 30 days, and could be longer depending on the payday, when the termination notice is given, and the termination effective date.

An employer who fails to provide sufficient termination notice in advance is legally required to make payment in lieu of the shortfall notice period.

Severance Pay

Severance pay is required if the employer terminates an employee not due to any statutory grounds for termination, and the employee has worked for 120 days or more at the following rates:

- service of more than 120 days but less than one year: 30 working days' wage is payable;
- service of one year or more but less than three years: 90 working days' wage is payable;
- service of three years or more but less than six years: 180 working days' wage is payable;
- service of six years or more but less than ten years: 240 working days' wage is payable;
- service of ten years or more but less than 20 years: 300 working days' wage is payable; and
- service of 20 years or more: 400 working days' wage is payable.

Payment for Accrued but Unpaid Wages

Any outstanding wages must be paid within three days from the effective date of termination.

Payment instead of Unused Annual Holidays

The employer will be required to make payment in lieu of unused annual holidays (pro-rated for the year of termination, and carried forward from previous years, if any), which must be paid within three days from the effective date of termination.

Any Contractual Payments

Contractual payments may have to be paid upon termination as agreed between the employer and the employee (if any), in accordance with the terms and conditions of those payments.

No government authority permission is legally required for termination.

7.3 Dismissal for (Serious) Cause

The employer can terminate an employee's position without providing advance notice or severance pay when the employee has committed any of the following offences:

- been dishonest in the exercise of their duty or intentionally committed a criminal offence against the employer;
- intentionally caused damage to the employer;
- caused gross damage to the employer, through their negligence;
- violated any work regulations, rules or orders of the employer, which are lawful and fair (and for which the employer has previously given a warning in writing), and the employee repeats the violation within one year from the date of the violation (in a serious case, the employer is not required to give such warning);
- neglected duties for three consecutive regular working days, regardless of whether there is a holiday in between, without a reasonable excuse; or
- been sentenced to a term of imprisonment by a final judgment of the court – if such imprisonment is a result of an offence committed by negligence or a petty offence, it must have caused damages to the employer.

For the employer to be able to rely on these statutory termination grounds, a written termination notice with the details of the grounds for termination must be given to the employee at the time of the termination.

7.4 Termination Agreements

Termination agreements with employees (including the employee's agreement to release and waive the right to claim against or sue the employer) are generally permissible, provided that the employee voluntarily enters into such an agreement. Termination agreements are helpful to mitigate the litigation risk associated with the termination of employment, particularly the unfair termination claim (see **8.1 Wrongful Dismissal**).

The employer will often have to offer some extra payments (ex gratia payment) in addition to all termination payments that are already required to persuade the employee to sign the termination agreement. There is no legal requirement or guideline on the ex gratia payment, which is up to the parties to negotiate and agree.

7.5 Protected Categories of Employee

Employees are protected from dismissal in the following circumstances:

- an employer is prohibited from terminating a female employee on the grounds of her pregnancy;
- under the LRA, an employer is prohibited from terminating an employee who is a member of an employee committee, unless permission is obtained from a labour court; and
- termination of an employee must not involve any unfair practices under the LRA (eg, termination of an employee due to the employee being a member of a labour union or due to their participation in submitting a labour demand or negotiation for a CBA).

8. Disputes

8.1 Wrongful Dismissal

There is a concept of "unfair termination" under Thai law, whereby a terminated employee may decide to bring a claim of unfair termination against the employ-

er even if the employer has already paid them all statutory payments upon termination, and ask the court to order:

- reinstatement (rather rare); or
- separate unfair termination compensation.

Generally, the Supreme Court's precedents require that the termination must be fair both substantively (eg, the ground for termination must be justifiable and reasonable) and procedurally (eg, the employee selection is fair, and the termination should be a last resort). If the court finds the termination unfair, it is likely to order the employer to make unfair termination compensation, which is in addition to the statutory termination payments. The court is free to determine the amount as it deems appropriate (eg, it may base the amount on the employee's one month of wages for each year of their service, or on something else).

If the court determines that the employer has terminated the employee in bad faith (such as without valid reasons, or through bullying or retaliation), it may order a significant amount of unfair termination compensation as a punitive measure against the employer.

8.2 Anti-Discrimination

There is no specific legislation dealing with discrimination in the workplace, but various legislation prohibits discrimination, including the following:

The Constitution of Thailand

This prohibits discrimination on the basis of place of birth, nationality, language, gender, age, physical or health condition, economic or social status, religious belief, education or training, or political ideology.

The LPA

Under the LPA, an employer shall treat male and female employees equally in employment, unless the description or nature of the work prevents such treatment. Furthermore, an employer must fix wages, overtime pay, holiday pay and holiday overtime pay at the same rate for male and female employees who undertake work of the same nature and quality, and an equal quantity or work of equal value.

An employer who violates these provisions shall be subject to a maximum fine of THB20,000. The injured employee may claim damages from the employer on the grounds of a wrongful act under the Civil and Commercial Code.

Gender Equality Act B.E. 2558 (2015)

Under the Gender Equality Act, any private organisation is prohibited from prescribing policies, ordinances, rules, notifications, measures, projects or practices that appear to discriminate unfairly based on gender. Unfair discrimination based on gender is defined under this law to cover the grounds that such a person is male or female or expresses themselves differently from their inborn gender, which is broader than the protection under the LPA.

Unfair discrimination based on gender could result in an order issued by the competent committee requiring a person to comply with appropriate measures to cease and prevent the recurrence of unfair discrimination based on gender and to pay compensation to the injured person. Moreover, the injured person may file a complaint to the court to claim compensation due to such discrimination, including punitive damages up to four times the actual damages.

There is also other legislation dealing with discrimination in some aspects regarding childcare and disability.

8.3 Digitalisation

The electronic method of consulting and filing labour claims is now available through the website of the labour court. Online procedures for witness trials and proceedings for the labour court are also available, subject to the agreement by the parties in the case and the court's approval.

9. Dispute Resolution

9.1 Litigation

There is a specialised labour court, which has jurisdiction over labour disputes, with specific procedures for labour cases. There is no court fee, and no lawyer is required to file a case with the labour court. The court will try to reconcile the parties so they can reach a

mutual settlement first. The labour court's ruling can be further appealed to the Court of Appeal for Specialised Cases with a special division for labour cases, but only on the legal issues in the case. Even though the ruling of the Court of Appeal can be further appealed to the Supreme Court, this rarely happens in practice since it would normally require the Supreme Court's approval in the first place.

The court does not generally accept class actions for a labour case. However, the labour court can consider consolidating all other complaints that have the same facts and issues (eg, termination cases concerning many similar employees of the same employer) into one case to expedite the process.

9.2 Alternative Dispute Resolution

An arbitration clause as the choice of forum under Thai law is possible and enforceable.

In matters related to labour law, such as wage payments, severance pay, and damages for unfair termination, the Thai labour court will maintain its jurisdiction over the case despite any arbitration clause. This is because the court views these issues as linked to public order. As a result, it is neither common nor recommended to attempt arbitration for labour disputes.

9.3 Costs

There is no court or official fee for filing a labour case with the court in the first place.

Trends and Developments

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Baker McKenzie (Bangkok) is ranked as a Band 1 Firm for employment in Thailand by Chambers Asia Pacific 2021-2025. Its employment and compensation practice in Thailand consists of more than 10 members. The size and diverse expertise of the firm's team enables it to manage all of its clients' employment needs, from day-to-day human resources requirements to critical business change and restructuring. Baker McKenzie Bangkok represents employers in collective bargaining and works council negotiations, and also develops robust industrial re-

lations strategies. The firm guides employers through all aspects of the litigation process. Baker McKenzie is the only law firm to be ranked Band 1 by Chambers Global for Employment for 15 consecutive years. With 650+ employment lawyers and professionals in over 70 offices across more than 40 jurisdictions, working closely with tax, IP, antitrust, compliance and litigation, the firm draws upon resources in its network to provide timely and integrated solutions to all your employment needs, wherever you are.

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The general shifts in working culture towards greater flexibility amidst economic uncertainty and the interplay of factors affecting the traditional legal paradigms are putting pressure on employers. Rapid technological progress, workforce redesign trends focusing on a flexible workforce, and the emergence of Environmental, Social, and Governance (ESG) considerations have led to a changing environment for business operations. These ongoing trends have been exacerbated by geopolitical tension and inflation, driving strategic business restructuring and downsizing. Along with domestic demographic change driving the need to embrace an ageing workforce, these are some of the key trends and developments shaping the employment landscape in Thailand.

Inclusion, Diversity and Equity

Marriage Equality Law

On 18 June 2024, the Thai Senate passed the act amending the Civil and Commercial Code, commonly known as the Marriage Equality Law, making Thailand the first country in Southeast Asia to enact a law concerning marriage equality. The law became effective on 22 January 2025.

The Marriage Equality Law aims to ensure that all individuals, regardless of their biological sex, are granted the same fundamental rights in marriage under the Civil and Commercial Code. Gender-neutral language has been used to replace gender-specific terms such as “a man and a woman” and “husband and wife”, using instead “two individuals” and “spouses” respectively. The law also specifies that spouses who legally register for marriage will be entitled to rights and subject to obligations under any laws and regulations that establish the rights and obligations of a husband and a wife or spouses, regardless of whether the terms used in other laws are changed to align with the Marriage Equality Law.

Given the above, employers may consider revisiting their existing employment regulations, policies and benefits to take into account the amendments under this law, including using gender-neutral language where appropriate and revising certain benefits that are originally offered only to “husband” or “wife” of employees to simply their “spouse” to include all

legally married spouse, regardless of any specific sex and gender.

Increased attention to ESG considerations

The changing legal and regulatory landscape with increased attention to the “S” in ESG is posing multi-jurisdictional compliance risks to businesses, compounded by growing media scrutiny and pressure from stakeholders on companies to conduct business responsibly. Companies need to ensure not only their own compliance with local labour laws but also their compliance with international human rights standards.

Under the Thai Constitution, human rights are fundamental and observable in government-level policies, which provide protection, safety, and good occupational health for workers. Thailand’s Labour Protection Act prescribes a minimum standard for workers as the main piece of legislation for labour protection. There is also a specific legal framework on maritime labour which has been adopted since 2015, in accordance with the Maritime Labour Convention 2006 of the International Labour Organisation (ILO), to ensure that the maritime-related workforce is treated fairly.

In addition, the Thai government, in cooperation with the United Nations Development Programme (UNDP), published Thailand’s 2nd National Action Plan (NAP) on Business and Human Rights in 2023, which primarily focuses on improving and addressing urgent and important human rights issues caused by business activities. The plan covers the period from 2023 to 2027.

However, there is currently no specific legislation which imposes obligations on Thai companies to conduct HRDD. Nonetheless, the private sector, particularly those heavily involved with exporting and industries such as fisheries, has been actively working with the government in monitoring human rights issues in their supply chains on a voluntary basis for some time. Non-government organisations also play a vital role in monitoring and publishing related reports.

Despite an absence of legal requirements for HRDD, some companies, including their suppliers, may be required by their customers to conduct their HRDD to ensure their entire operation and supply chain fully

respect and comply with human rights and relevant legal obligations, especially those relating to their own employees and migrant workers.

Employee Welfare Fund

While the Employee Welfare Fund is not a new development, as it has been prescribed in the Labour Protection Act B.E. 2541 (1998) (“LPA”), without necessary sub-regulations to kickstart its mandatory obligations, it has remained dormant up until now. With the recognition that the current legal entitlements for employee in case of unemployment may not be sufficient to fully provide the employee’s social safety net when they leave their job, the Thai government has introduced several sub-regulations issued under LPA in 2024 to finally implement the mandatory obligations under Employee Welfare Fund upon the employer, which will take effect from 1 October 2025.

Three key pieces of legislation relating to the Employee Welfare Fund were introduced in November 2024 and will take effect from 1 October 2025.

Summary of the employer’s main requirements under the Employee Welfare Fund is as follows.

The requirements under the Employee Welfare Fund apply to employers who have 10 or more employees and to all employees who have not yet joined the provident fund.

- The employers and employees who are subject to the Employee Welfare Fund will be required to make monthly contributions to the Fund at 0.25% of the employee’s wage from 1 October 2025 to 30 September 2030. Starting 1 October 2030, the contribution rate will be increased to 0.5% of the employee’s wage.
- The employers are required to make their own contribution and deduct from the employees’ wages to make contributions at the same rate above to the Employee Welfare Fund on a monthly basis by the 15th of the month following the wage deduction date.
- The employers are required to submit a list of employees who are subject to the Employee Welfare Fund and other required information by the

15th of the month subsequent to the wage payment date.

However, the above requirements are exempted if the employer has already submitted the employer’s and employee’s registration with the Social Security Fund.

Business Change and Workforce Restructuring

In the wake of global economic uncertainty, companies are making strategic decisions to optimise their portfolios and prioritise financial growth. Additionally, the geopolitical climate has prompted companies to re-evaluate their supply chains and strategies. Against the need to stay resilient and manage risks, organisations and employees are eager to capitalise on the opportunities offered by technological advancements and shifts in working culture to stay flexible.

Whether a company chooses to restructure or expand into new business areas, there are key employment considerations that must be addressed during business change and restructuring projects. Whether it be an acquisition, disposal, spinoff, restructuring, or reduction in force, these actions come with complex employer obligations. It is crucial, therefore, for employers to be aware of these obligations and be well-prepared to handle them. Practical and legal issues may include, for example:

- legal requirements and approaches to moving employees to a new entity;
- post-acquisition integration issues such as benefits and welfare; harmonisation, standardising HR processes and documents, and managing potential redundancies; and
- workforce reduction, which results in termination of employment, carries legal risks and requires the employer to comply; thus, employers should plan ahead for the right approaches to deal with employees who will have to leave effectively.

Recent developments in the alternative workforce

With a move towards more flexibility and new ways of hiring, employers are increasingly embracing and capitalising on technological advancements. However, laws do not always provide clear guidance on complex legal issues around these arrangements. These legal complexities require careful navigation,

from compensation and benefits to immigration, corporate tax, cybersecurity, and data compliance and data privacy issues, among others.

A pressing legal issue is whether gig or contingent workers are legally considered employees of their hirers. In this regard, there are contrasting views between Thailand's National Human Rights Commission (NHRC) and the Thai labour courts to consider below.

The recent ruling by NHRC in 2024 on the status of delivery riders highlights this issue. The NHRC ruled that riders are employees of the digital platform owners, not merely their business partners, and thus have the employer-employee relationship in accordance with the Thai labour laws, including being entitled to rights and benefits under such laws as employees.

Several factors were taken into account by NHRC, including the fact that NHRC views that the digital platform owners could have supervisory control over the riders through the terms and conditions of services, such as requirements on the work acceptances, working hours, and uniforms, whereby non-compliances by riders could subject them to penalties such as suspension of services.

Additionally, it was deemed that the riders do not have a say or stake in the operation of the digital platform business nor its profits and losses, which would be the case of a business partner.

Interestingly, the NHRC's ruling and rationale were based mainly on the Thai Constitution, international treaties, and foreign court rulings. It should also be noted that the NHRC's ruling lacks legal standing and is not legally binding.

In contrast, the Thai labour court, in some recent court rulings, has decided in similar cases that a platform worker is not considered an employee of a platform operator under Thai labour laws.

While the two contrasting views involve different facts, they reflect ongoing legal debates and complexities around non-traditional work models, which can trig-

ger several compliance issues, risks and uncertainty for employers.

To formally address these alternative workforces, a new legal framework is being developed in Thailand in the form of the draft "Promotion and Protection of Independent Worker Act." The draft act aims to provide broader coverage and protection to all independent workers, especially "semi-independent workers," which includes platform workers. The draft proposes to help independent workers by providing certain benefits and protections, eg, setting up a fund to provide certain assistance and loans to independent workers, as well as providing them with the right to form organisations. However, it remains to be seen whether the draft act can strike the right balance between the interests of gig workers and other relevant parties.

Continued trend in flexible work arrangements

We have seen employers in some countries considering allowing their employees to work remotely 100% if they wish to do so, while at the same time, reducing their compensation and benefits, given that their cost of living and travelling expenses may not be as high as before. Also, the emerging trend of non-traditional hiring methods involving flexible and agile workforces, also known as the "modern workforce," is expected to continue, which would give rise to further legal issues for employers to consider.

In April 2023, a new amendment to the Labour Protection Act ("LPA") to facilitate remote working in Thailand was introduced through the new Section 23/1 and came into effect, aligning with the global trend and providing alternatives for employers and employees to agree on remote working arrangements.

Effectively, Section 23/1 states that employers and employees can come to an agreement allowing the employee to perform work that can be done outside of the business premises or office of the employer with convenience, under their employment, or as agreed with the employer to be performed at the employee's home or residence or anywhere remotely using information technology. In this regard, employers must prepare a written agreement that includes details such as the start and end dates of the work period; working days and hours, rest periods, and overtime work;

scope of work, control and supervision; and duties to provide work equipment. Employees who work from home, their residence, or anywhere else using information technology must have the same rights as employees who perform work at the workplace or office of the employer.

Interestingly, the amended LPA also introduced the concept of “the right to disconnect” for remote working employees. The right to disconnect allows employees working outside the employer’s work environment to refuse contact from the employer, including the chief, supervisor, or work inspector, after normal working hours. This concept has already been introduced in various jurisdictions and is also present in the new Section 23/1.

However, this provision is not mandatory. The amended Act aims only to facilitate agreements between employers and employees regarding such arrangements. Employers who have already implemented work-from-home or remote working arrangements may need to revisit key documents, such as employment contracts, work-from-home policies, and work regulations, in light of the new Section 23/1 to determine if revisions are necessary. Employers who have yet to adopt a work-from-home policy or agreement may also need to consider whether to implement one and what documents would be involved.

Employers’ Adaptation to an Aged Society

Thailand is transitioning into an aged society and is projected to become a full-fledged one in mere decades. This will also inevitably affect Thailand’s workforce, and we could expect to see a shrinking workforce in the future. One of the key considerations that could address such an issue is how employers would manage their ageing workforce, particularly related to retirement.

It is worth noting that an employee’s retirement under the Thai labour law is considered a termination of employment. Consequently, the employer will have to pay all termination payments, including severance pay, as required upon the employee’s retirement. However, there is no statutory retirement age under the Thai labour law, and it is up to the employer to decide on the retirement age as appropriate, although we have seen a common retirement age in Thailand to be 60 years old.

In this respect, employers may have to consider revisiting their retirement age as they may need to increase the current retirement age to retain their senior employees who may still possess knowledge and expertise valuable to their businesses.

Moreover, employers may also have to think about approaches to retain employees to work after their retirement, eg, extending their retirement age or executing agreements after they have effectively retired. New arrangements on terms and conditions of employment with employees may also have to be redesigned as appropriate to their work life after retirement, such as more flexible working days and hours, new rates of benefits and compensations, etc.

Law and Practice

Contributed by:

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Slaughter and May



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Slaughter and May is a leading international law firm recognised for exceptional legal service, commercial awareness and commitment to clients. Its employment practice offers creative, tailored and pragmatic advice on the most difficult and sensitive employment issues. The firm supports a diverse range of businesses – from FTSE-listed companies to start-ups, and from private ventures to charities – and works closely with boards, chief people officers, general counsel, heads of legal and HR and reward professionals. The firm's advice combines the latest legal and market analysis with an in-depth understanding

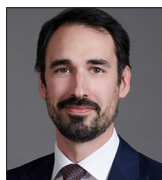
of clients' cultural and strategic priorities. It has unrivalled experience in advising boards on sensitive employment issues, as well as the latest corporate governance and executive remuneration requirements. Slaughter and May advises on high-stakes issues involving accelerated terminations, discrimination, whistle-blowing and restrictive covenants. Its lawyers are uniquely well-placed to handle complex, sensitive workplace investigations, particularly those with regulatory angles and elements of reputation and crisis management.

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SLAUGHTER AND MAY

1. Employment Terms

1.1 Employee Status

Under current English law an individual may be:

- an employee;
- a worker; or
- self-employed.

While there are statutory definitions for both “employee” and “worker”, employment status is determined through a fact-specific analysis that considers the actual nature of the employment relationship, rather than solely relying on the terms of the contract. It is not possible for an individual to contract out of their real employment status.

Employees

An “employee” is an individual who has entered, or works under, a contract of employment – meaning a contract of service or apprenticeship which may be express or implied, oral or written (Section 230 (1) and (2) of the Employment Rights Act 1996 (ERA 1996)).

Case law has developed the following key components of an employment relationship:

- the individual is required to provide services personally, and cannot send a substitute;
- the employer is obliged to provide work for the individual, which the individual is obliged to do (so-called “mutuality of obligation”); and
- the employer exerts the requisite level of control over the individual.

Other factors such as notice provisions and provision of equipment or insurance may help determine the existence of a contract of service, but the presence or absence of any one of these other factors is not determinative.

“Employees” are entitled to the full range of statutory employment rights discussed in this guide.

Workers

A “worker” is an individual who has entered into a contract personally to perform any work or services for another party, as long as that other party is not the client or customer of any business or profession carried on by the individual (Section 230 (3) of the ERA 1996).

The personal service requirement for a “worker” is not as stringent as it is for an “employee”. For instance, if the contract permits the individual to send a substitute, but only if they are unavailable and with the employer’s agreement, that individual would not be an employee, but could be a worker.

Another key element of worker status is the degree to which the individual is integrated into the employer’s business. If the individual is highly integrated they are likely to be a worker, whereas if they are genuinely in business on their own account, they will not be.

“Workers” are entitled to a more limited range of statutory employment rights than employees: their principal rights are protection against discrimination, protection for making a protected disclosure (whistle-

blowing) and rights in relation to working time, national minimum wage (NMW) and holidays. Workers do not currently have unfair dismissal or redundancy protections.

Self-employed

An individual is “self-employed” if they provide services to another party while running a business or profession in their own right. Self-employed individuals do not benefit from the majority of employment protections and are only entitled to certain minimum rights, such as a safe working environment.

Future Reform?

In their pre-election Plan to Make Work Pay, the Labour Party expressed an intention to “move towards a single status of worker for all but the genuinely self-employed”. This may result in the current statuses of “employee” and “worker” being combined but is likely to be the subject of future consultation. This change is not part of the Employment Rights Bill (ERB), and given the wider impact on taxation, the government may require more time to carefully consider such changes.

1.2 Employment Contracts

Under English law an employment contract need not be in writing (but usually is). In accordance with Section 1 of the ERA 1996, upon commencement of employment, the employer is required to provide an employee or worker with a written statement of certain particulars of employment, the majority of which must be provided in a single document. This statement must be provided on or before the date on which the employment starts. It can be provided separately, but in practice the terms required by the statement are often incorporated into the employment contract.

These particulars include:

- the names of the employer and the worker;
- the date when the employment began;
- the date on which the employee’s continuous employment began;
- the scale or rate of remuneration, or the method of calculating remuneration;
- the intervals at which remuneration is paid;
- details of all remuneration and benefits provided;
- any terms and conditions relating to hours of work;

- the days of the week the worker is required to work, whether the working hours may be variable and how the variation will be determined;
- any terms and conditions relating to holidays, including public holidays and holiday pay;
- any terms and conditions relating to sick leave and pay;
- any other paid leave to which the worker is entitled;
- any terms and conditions relating to pensions and pension schemes;
- the length of notice that the worker is required to give and entitled to receive to terminate their employment;
- the job title and brief description of the work for which the worker is employed;
- the place of work;
- any collective agreements that directly affect the terms and conditions of employment;
- specified particulars where the worker is required to work outside the UK for a period of more than one month;
- any disciplinary and grievance rules or procedure applicable to the worker, or a reference to a readily accessible document specifying such rules;
- any probationary period; and
- any training entitlement provided by the employer, including whether any training is mandatory and/or must be paid for by the worker.

Employment contracts can be indefinite (but would include a notice period, either express or implied) or for a fixed-term duration. Fixed-term employees enjoy additional protections, including the right not to suffer discrimination because of their fixed-term status unless differential treatment can be objectively justified. An employee who has been continuously employed under a series of fixed-term contracts for a period of four years or more is deemed to be a permanent employee, unless the continued use of fixed-term contracts is objectively justified.

In addition to the express terms of the contract, English law also implies certain terms into employment contracts. These implied terms include the following.

- The duty of mutual trust and confidence.
- Obligations on the employee to:
 - (a) serve the employer faithfully;

- (b) obey the employer's reasonable and lawful orders; and
- (c) exercise reasonable skill and care in performing their duties of employment.
- Obligations on the employer to:
 - (a) take reasonable care of the health and safety of the employee; and
 - (b) exercise its discretion rationally when making decisions about the employee.

1.3 Working Hours

Under English law, there is technically a maximum 48-hour working week under the Working Time Regulations 1998 (WTR). However, employers are able to ask workers to opt out of this limit (and often do so). There are also exceptions from the 48-hour maximum working week, including for management level workers.

Workers are also entitled to daily and weekly rest breaks, and specific restrictions apply to periods of night work.

Currently, all UK employees have the right to request flexible working. Employers must deal with such requests in a reasonable manner, but can refuse an application if they have a good business reason for doing so (which is relatively straightforward to establish in practice).

The ERB makes a minor change to the existing right, requiring the employer to act reasonably in determining the reason for refusal and to communicate this rationale to the employee.

Part-time workers have the right not to suffer discrimination because of their part-time status, unless differential treatment can be objectively justified. Remuneration and benefits may generally be applied on a pro rata basis to reflect the time actually worked.

Overtime is primarily governed by the contract of employment and may be compulsory or voluntary. Employers do not necessarily have to adopt formal arrangements for paying workers for overtime; however, they must be careful to ensure the worker's average pay for the total hours worked does not fall below the national living wage (NLW) or NMW, as applicable

(see **1.4 Compensation**). Where compulsory and/or regular, overtime should be included in the calculation of statutory holiday pay.

1.4 Compensation

All English workers aged 21 or over must be paid the NLW. Younger workers and apprentices are entitled to the NMW. Records should be kept by employers to confirm that eligible workers have been paid at least the NLW or NMW. Paying less than the NLW or NMW is a criminal offence that may attract fines and/or "naming and shaming" by HMRC.

As of 1 April 2025, the hourly NLW and NMW rates were:

- NLW (21 and over): GBP12.21;
- NMW 18–20 year-old rate: GBP10.00;
- NMW 16–17 year-old rate: GBP7.55; and
- NMW apprentice rate: GBP7.55.

Other current rates and payments applicable from 6 April 2025 include the following:

- statutory sick pay (SSP) – weekly rate of GBP118.75;
- statutory maternity pay (SMP) – 90% of normal pay for the first 6 weeks, thereafter the lesser of GBP187.18 per week or 90% of average weekly earnings for the remaining 33 weeks;
- statutory paternity pay (SPP), shared parental pay (ShPP), and adoption pay (SAP) – prescribed weekly rate of GBP187.18; and
- statutory redundancy pay (SRP) – GBP21,570 maximum.

The ERB contemplates the SSP rate changing from the flat rate to the lower of either the flat rate or 80% of the employee's weekly earnings.

An employer is not permitted to make deductions from an employee's salary, such as deducting tax, without either statutory authorisation or the employee's consent, which is often sought through the employment contract.

In addition to salary, it is common to reward and incentivise employees through the use of bonuses

and similar arrangements. These may be contractual entitlements but are more commonly expressed as being discretionary.

1.5 Other Employment Terms

Holidays

UK workers have the right to 5.6 weeks' paid holiday each year (which equates to 28 days for full-time workers). This is made up of four weeks' leave under regulation 13 WTR and 1.6 weeks' additional leave under regulation 13A WTR. Different rules apply to how holiday is accrued, paid and carried over under regulations 13 and 13A, and there is also a separate regime for irregular hours and part-year workers. Workers may also be granted additional holiday under the contract of employment, which would then be governed by the contract terms. As such, holiday entitlement is a relatively complex area of English employment law.

Sickness

Employees who are unable to work due to illness or injury are entitled to receive SSP, provided they meet the qualifying conditions. Employees do not currently receive SSP for the first three days of any sickness absence. The weekly rate of SSP from April 2025 is GBP118.75. The maximum entitlement is 28 weeks' SSP during any period of incapacity for work (or any series of linked periods). An employee may also be entitled to contractual sick pay.

Maternity and Family Leave

Eligible employees are entitled to up to 52 weeks' statutory maternity leave. They are also entitled to receive up to 39 weeks' SMP if they meet certain qualifying conditions. SMP is payable at 90% of their average weekly earnings for the first six weeks, and the lesser of GBP187.18 per week (from April 2025) or 90% of their average weekly earnings for the remaining 33 weeks. Equivalent rights exist on adoption.

Employees who are eligible for statutory maternity or adoption leave may choose to end that entitlement and instead opt into a shared parental leave regime (if they meet certain qualifying conditions). This allows up to 50 weeks' leave and 37 weeks' pay to be shared between both parents. The parents may take the leave together at the same time or separately, and in discon-

tinuous blocks of at least one week, returning to work in between. This is subject to the employers agreeing the proposed pattern of leave; if agreement cannot be reached, the leave is taken in one continuous block.

Employees who are fathers/partners are also entitled to two weeks' statutory paternity leave, if they meet certain qualifying conditions. They may also be eligible for SPP, payable at the lower of GBP187.18 per week (from April 2025) or 90% of the employee's average weekly earnings.

Employees who take statutory maternity, adoption, shared parental or paternity leave are also entitled to receive the benefit of all their contractual terms and conditions of employment (except remuneration) during the period of leave. They also have additional protections on return to work and on redundancy. Employees may also receive enhanced rights to maternity or family leave/pay from their employer on either a contractual or discretionary basis.

Employees who are parents are also eligible to take up to 18 weeks' unpaid parental leave for each child, up to the child's 18th birthday.

While the 26-week qualifying period of employment will remain in place for shared parental leave, the ERB contemplates unpaid parental leave and statutory paternity leave after a period of shared parental leave being a day one right, with no qualifying period.

Confidentiality and Non-Disclosure Agreements (NDAs)

Employees owe implied duties of confidentiality during their employment, and are often required to sign up to an NDA as part of their employment contract – which extends their confidentiality obligations post-termination of employment. There are, however, limitations on the scope and enforceability of NDAs against employees (see 7.4 Termination Agreements).

Employee Liability

Claims against individual employees are not as common as claims against employers, although employees can be individually liable for certain acts – eg, discrimination against co-workers.

An employer may be found vicariously liable for an employee's tortious act if it was committed in the course of the employee's employment or is closely connected with what the employee was authorised by the employer to do.

Under the Civil Liability (Contribution) Act 1978, an employer may be entitled to seek an indemnity from the employee should they be forced to pay damages in respect of the employee's tort. The court will allow such a claim if it is "just and equitable" to do so – but in practice, such claims are very rare.

2. Restrictive Covenants

2.1 Non-Competes

Non-compete clauses in UK employment contracts are only enforceable if the former employer can show that the clause goes no further than is reasonably necessary to protect one of its legitimate business interests, which include its trade secrets, trade connections and workforce stability. Non-competes need to be drafted as precisely and narrowly as possible to maximise the chance of enforcement, and should only restrain activities of a type, location and duration that would likely cause material damage to the former employer's business. An employer is not obliged to make any payment to a former employee in exchange for being bound by such restrictions.

Non-competes are enforced by way of an application to the High Court for an injunction to restrain the ex-employee's activities. The Employment Tribunals have no jurisdiction to hear restrictive covenant disputes. The Court will decide on the enforceability of the covenant and whether an injunction is justified, balancing the potential impacts on the employer and the employee if the injunction is (or is not) granted.

2.2 Non-Solicits

Non-solicitation clauses are designed to prevent former employees from approaching the former employer's customers or suppliers with a view to obtaining their business, or employees with a view to employing them. As with the non-compete clauses, any non-solicit clause will only be enforceable if it goes no further than is reasonably necessary to protect

the former employer's legitimate business interest(s). Non-solicits will also need to be carefully drafted, and usually limited in scope to only prohibit solicitation of contacts with whom the former employee had material dealings in the period leading up to termination of their employment.

Non-solicits are generally considered less restrictive than non-competes and may therefore be easier to enforce, although the former employer will need to adduce evidence that solicitation has actually occurred. An alternative approach would be to use a non-dealing clause, which would not require solicitation by the former employee. However, since non-dealing clauses are more restrictive than non-solicitation clauses, they are also harder to enforce.

3. Data Privacy

3.1 Data Privacy Law and Employment

Employers have obligations to their workers under the Data Protection Act 2018 (DPA) and the UK General Data Protection Regulation (GDPR). Employers should also follow guidance published by the Information Commissioner's Office (ICO) to ensure compliance with their obligations under DPA and GDPR. Employers who do not comply with their DPA and GDPR obligations can face civil and criminal penalties.

Employers are "data controllers" for the purposes of DPA, on the basis that an employer is ultimately in charge of and responsible for the processing of its employees' data.

Employers must have a valid legal basis for processing employee data under Article 6 of the GDPR. Some of the grounds typically relied on by employers for processing employee data are that the processing is necessary for:

- the performance of a contract to which the data subject is party – eg, processing an employee's bank details for the purposes of paying them;
- compliance with a legal obligation to which the controller is subject – eg, processing an employee's personal details for tax purposes; and

- the employer's "legitimate interests" – eg, processing information about an employee's performance.

Consent is included as a lawful basis under Article 6 of the GDPR. However, ICO guidance warns employers against using employee consent as a ground for processing employee data, given the inherent imbalance of power in an employment context.

Additional considerations apply to the processing of "special categories of personal data", which include:

- racial or ethnic origin;
- political opinions;
- religious or philosophical beliefs;
- trade union membership;
- genetic and biometric data;
- health; and
- sex life or sexual orientation.

To process special category data about its employees, an employer must first identify a lawful basis under Article 6 of the GDPR, and then an additional special category ground under Article 9 of the GDPR. The special category ground most likely to be relied on by an employer is that the processing is necessary for the performance of rights and obligations in connection with employment. To rely on this ground, the employer must be able to identify their legal obligation or right under employment law, and any processing must be limited to what is a reasonable and proportionate way of meeting that obligation. ICO guidance issued in February 2025 further outlines how employers should deal with special category data in the context of collecting and keeping employment records.

The Data (Use and Access) Act 2025 (DUAA) also makes significant changes to data protection law that employers should be aware of:

- an uplift in the maximum fines for marketing/cookie and other tracking technology infringements to the GDPR levels and increased enforcement tools for the ICO;
- a relaxation of the rules on the use of cookies, which would allow employers to set some types of cookies without having to get consent;

- a relaxation of the rules around automated decision-making, enabling greater use of legitimate interests where decisions do not involve special category data; and
- a clarification of the GDPR rules around scientific research to bolster confidence in the application of these provisions, with potential relevance for AI training.

Data Subject Access Requests (DSARs)

Under Article 15 of the UK GDPR, current and former employees can make a DSAR to obtain all their personal data held by their employer. The employer must respond within one month, with the possibility of a two-month extension. Certain information is exempt from a DSAR, including:

- information about other people, which typically should be redacted;
- confidential references provided or received for employment purposes; and
- management information if disclosure is likely to prejudice the conduct of the business.

Moreover, under the DUAA, an employer will only have to make "reasonable and proportionate" searches when an employee makes a DSAR.

Employee Monitoring

Employers may wish to monitor their employees for a variety of reasons: to review their performance, to protect their health and safety or as part of information security measures. Such monitoring may cover use of telephone systems, email content and traffic, device activity or CCTV and video surveillance.

Employers should carry out a Data Protection Impact Assessment (DPIA) and notify employees of the scope and purposes of any proposed monitoring.

Monitoring should be restricted to the smallest numbers of people possible and to the least intrusive methods of processing. Generally, information gathered should be used only for the purpose for which the monitoring has taken place.

Employers should also be mindful of their use of biometric attendance monitoring. According to updated

ICO guidance issued in 2024, the use of biometric data must be necessary and proportionate. Employers must document their reasons for using it and if a reasonable alternative option to using biometric data is possible, employers should be able to justify why they do not use this method. Moreover, employers should provide an alternative for those who do not want to use biometric access controls (such as ID cards or pin numbers).

AI in Recruitment

Employers may wish to use AI in their recruitment process. The ICO has set out its AI and biometrics strategy to manage risks and public concerns with the use of AI. Among other things, the strategy sets out how the ICO will:

- secure public confidence in generative AI foundation models by working with developers to ensure they use people's information responsibly and lawfully in training these models; and
- ensure that automated decision-making systems are governed and used in a way that is fair to people, focusing on how they are used in recruitment.

4. Foreign Workers

4.1 Limitations on Foreign Workers

Employers are required to check that their workers have the right to work in the UK, and to keep records of their eligibility to work here.

Following Brexit, the free movement rights of European Economic Area (EEA) and Swiss nationals ended on 1 January 2021. EEA and Swiss nationals (as well as qualifying family members) residing in the UK before 1 January 2021 may remain and work in the UK, if they have secured their immigration status under the EU Settlement Scheme.

A points-based immigration scheme was introduced in the UK on 1 December 2020, and has applied to EEA and Swiss nationals since 1 January 2021.

4.2 Registration Requirements for Foreign Workers

The standard UK employment visa route into the UK is the “skilled worker” route. This visa can be granted for an initial five year period, and requires:

- a job offer from an employer in the UK who is a Home Office-approved licensed sponsor;
- the individual is skilled to at least A level or equivalent (proposed to change to degree level under the government's White Paper);
- the individual satisfies a minimum English language requirement; and
- the standard minimum salary for the position exceeds a prescribed threshold.

Another common immigration route for UK employers to bring in foreign workers is the global business mobility (GBM) route. This allows the immigration of foreign workers from the same corporate group, who typically require at least 12 months overseas experience within the same group as the UK employer (who must also hold a sponsorship licence). Unlike the skilled worker route, there is no English language requirement, and the visa can be granted for an initial nine year period. There are, however, higher qualification and salary requirements.

Fast-growing UK businesses may be able to bring in workers from overseas using the “scale-up” route. The business must hold a sponsor licence, and the worker must have a confirmed job offer to work for an approved scale-up business for at least six months, to do a job that is on the list of eligible occupations, and meet the minimum English language and salary threshold for that job. Scale-up visas are granted for an initial period of two years, with the potential to extend for a further three years if the eligibility requirements are still satisfied.

The “global talent” immigration route is for exceptionally talented or promising individuals in certain fields (academia or research, arts and culture, or digital technology) who wish to come to the UK to work. Individuals must be able to establish that they are a leader or potential leader in their field, usually by applying for a relevant endorsement. This route does not require the employer to hold a sponsor licence.

Finally, the standard visitor visa category allows qualifying nationals of countries other than the UK to undertake a very limited range of business-related, and in very limited cases work-related, activities in the UK for up to six months at a time.

5. New Work

5.1 Mobile Work

There are no specific statutory regulations on mobile or remote work. However, additional considerations may apply to remote work, as regards data protection, occupational health and safety, and social security.

Data Protection

Remote workers may need specific training on their obligations regarding data protection and confidentiality. Employers should also carry out a DPIA of the implications of employees working remotely. Relevant considerations include the following.

- Who will have access to an employee's computer and personal data? Can the employee encrypt or password-protect data?
- Should employees be required to access company systems through a VPN, use multifactor authentication and only use sufficiently secure wireless networks?
- Where hard-copy data is kept, does the employee have appropriate methods to store it?
- Will the employee's home or other place of work regularly be left unattended? Is it properly secured?
- How is information moved either between the employee's home and workplace, or between various remote working locations?

Occupational Health and Safety

Employers owe common law and statutory health and safety duties to all employees, even those doing mobile or remote work. Those duties can be harder to fulfil where employees are working remotely, in terms of risks to both physical and mental health. Employers must therefore ensure that they have processes to risk-assess remote working locations and provide such assistance, equipment, etc, as is needed to protect remote workers' health and safety.

Social Security

Where an employee is working from an overseas jurisdiction, local tax and social security contributions may be payable, which could require the employer to set up payroll within that jurisdiction. The employee may also gain an entitlement to certain mandatory benefits while working abroad, the cost of which would need to be managed by the employer. The employer should also consider whether the employee's remote working risks creating a permanent establishment of the employer (for tax purposes) in the overseas jurisdiction.

5.2 Sabbaticals

Typically, employers in the UK grant sabbatical leave as a matter of discretion. The terms of any sabbatical leave (eg, duration, who is eligible, whether it is paid and if so, how much) will likely be laid out in a sabbatical policy. The employer should make sure that any sabbatical policy is operated fairly and on a non-discriminatory basis. For instance, using length of service as a criterion for a sabbatical could be indirectly discriminatory on the grounds of age.

The employee remains employed during their sabbatical leave and, except as agreed between the employee and employer, remains bound by their contractual obligations (including those of fidelity and confidentiality) to their employer.

5.3 Other New Manifestations

Hybrid Working

Hybrid working, where employees work from both the office and their homes (or elsewhere), increased significantly during the COVID-19 pandemic. It has broadly continued in many sectors, although some employers are beginning to encourage employees back to the office on a more full-time basis.

Hybrid working has also been assisted by innovative technological developments that facilitate (for example) remote collaboration and more efficient desk-sharing. It has also had an impact on how employers lease and design their office space, to account for a more flexible pattern of employee attendance.

Four-Day Week

An initial pilot looking into the feasibility of a UK four-day working week was run in 2022. Sixty employers took part, and 54 of those maintained their new four-day working arrangements after the pilot concluded. A second pilot took place in November 2024, and its findings are expected to be presented to the government in the summer of 2025. It remains to be seen what actions the government may take once this second pilot concludes.

6. Collective Relations

6.1 Unions

The UK does not have as strong a culture of trade union engagement as many of its European neighbours.

Employees have the right to join an independent trade union. Those who join a union benefit from advice and support in workplace matters, including representation at disciplinary and grievance meetings.

Increasing the density of union membership in a workplace also provides a possible route to trade union recognition. Trade unions may be recognised either voluntarily by the employer or via a statutory process. The latter requires the union to satisfy a number of conditions, including that they have at least 10% membership amongst employees and would be likely to attract the support of the majority of employees in a ballot. The ERB grants the Secretary of State a power to reduce the requirement to show at the application stage that at least 10% of workers in the bargaining unit are members of the union (down to as low as 2%). Whether and to what extent this power will be used is yet to be seen and will follow with separate regulations.

Once the union is recognised, they are able to negotiate agreements with the employer on pay and other terms and conditions of employment on behalf of employees. This process is known as “collective bargaining” (see **6.3 Collective Bargaining Agreements**).

Recognised unions also have the right to be informed and consulted on a number of issues, including redun-

dancies, health and safety and business transfers. They may also instigate industrial action in the event of a dispute with the employer, although this is subject to compliance with a statutory balloting and notification procedure.

Trade unions rights were restricted under the previous Conservative government, including by the imposition of minimum service levels for certain strikes and more wide-ranging restrictions on strike action and ballots for trade union recognition. However, the ERB will remove the requirement for minimum service levels.

6.2 Employee Representative Bodies

In the UK, if an organisation has 50 or more employees, the employees have the right subject to certain conditions to request that their employer makes arrangements to inform and consult them about issues in the organisation. This may result in the formation of a national works council. Usually, this will be a permanent consultative body made up of management and employee representatives.

Pre-Brexit, UK employers who had at least 1,000 employees throughout the EEA and at least 150 employees in each of at least two of the relevant member states could be required to establish a European Works Council (EWC). The EWC has the right to receive information about the business and to be consulted about some of the business' activities. After 31 December 2020, the UK became a third country for the purposes of EWCs, and UK employees no longer count when determining if an undertaking or group falls within the scope of the EU Directive on EWCs. UK employees may continue to participate in an EWC if the agreement establishing it allows that. There was, however, a consultation launched in May 2024 that considered abolishing the legal framework for EWCs in the UK. At the time of writing, the consultation response had not yet been published.

Some employers convene more informal “employee forums”, which may have a mandate for consultation on a number of workplace issues (and are typically governed solely by their terms of incorporation, rather than by statute).

Where (as is common in the UK) an employer does not have any form of employee representative body, and is required to inform and consult collectively with employees (for example, on a business transfer or collective redundancy process), the employer will need to arrange for employee representatives to be elected for that purpose.

6.3 Collective Bargaining Agreements

Where an employer and trade union have undertaken collective bargaining and reached agreement, this is recorded in a collective agreement. The agreement may cover a number of matters such as pay, hours and holidays; other terms and conditions of employment; and disciplinary procedures.

Under English law, collective agreements are not generally legally enforceable between the trade union and the employer. However, their terms may be incorporated into the individual contracts of employment of employees who are covered by that agreement (known as the bargaining unit). The bargaining unit is not an equivalent population to the organisation's trade union members; it would typically be defined by job type or location, and may include trade union members and non-members alike. Those employees who have the terms of the collective agreement incorporated into their employment contracts can then enforce those terms against the employer. The trade union meanwhile could challenge the employer's non-compliance with a collective agreement by calling or threatening to call industrial action.

7. Termination

7.1 Grounds for Termination

Under common law, an employer can dismiss an employee for any reason, provided they comply with the contractual termination requirements, including notice provisions. There are, however, a number of statutory protections that may apply, most importantly the right not to be unfairly dismissed. This requires the employer to demonstrate that it has a fair reason for dismissal and has followed a fair process.

The five potentially fair reasons for dismissal are:

- conduct;
- capability;
- redundancy;
- breach of statutory duty or restriction; or
- some other substantial reason.

The fair procedure that must be followed by the employer – now envisaged in the ERB to be a day one right coupled with a power to make regulations on dismissal during an initial period of employment (IPE) – will depend to some extent on the particular reason for the dismissal; for instance, a redundancy process would typically look quite different from a lack of capability process (which itself could cover ill health or poor performance, both of which would require a different approach). That said, there are a number of common factors in most fair dismissal processes, which include:

- conducting a reasonable investigation;
- informing the employee of the allegations against them;
- holding a hearing; and
- providing an opportunity to appeal the employer's decision.

Employees have the right to be accompanied by a colleague or trade union representative at a disciplinary or grievance hearing. Additionally, the Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice on Disciplinary and Grievance Procedures will apply to dismissals for misconduct or poor performance (but not, for example, to redundancy or expiry of a fixed-term contract). Failure to follow the Code may affect the fairness of the dismissal and the amount of compensation awarded. Compensation for unfair dismissal is made up of:

- a basic award based on the employee's age, wages and length of service, but capped at GBP21,570; and
- a compensatory award capped at the lower of 12 months' pay or GBP118,223.

Both caps are as at 6 April 2025.

Collective Redundancies

A specific collective redundancies regime applies where an employer proposes to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less. The ERB will introduce a new threshold to trigger collective redundancy, where an employer is proposing to dismiss as redundant within a period of 90 days or less at least “the threshold number of employees” across multiple establishments. Regulations will define this threshold, but such threshold cannot be lower than 20.

“Redundant” for these purposes means that the dismissal is for a reason not related to the individual concerned. It would therefore not only catch more traditional redundancies, where there is a workplace closure or diminished need for employees, but also other types of dismissal, most importantly in the context of restructurings to effect a change in terms or job functions (including “fire and rehire”).

Where the regime applies, the employer must consult collectively with elected employee representatives about the dismissals. Consultation must commence in good time before any redundancies are confirmed, and dismissals should not take effect until the expiry of a minimum period following the start of consultation:

- 30 days – if between 20 and 99 dismissals are proposed; or
- 45 days – where 100 or more redundancies are proposed.

Failure to comply with the obligations to collectively consult in a redundancy situation may result in compensation being payable of up to 90 days’ full uncapped pay per affected employee. The ERB increases this level of compensation to 180 days’ full uncapped pay per affected employee.

In addition, employers must notify the Secretary of State of the proposed dismissals. The notification must be made in a prescribed format (Form HR1), and it must be made within the 30- or 45-day timescales set out in the foregoing. Failure to comply with this obligation is a criminal offence that attracts an unlimited fine (although prosecutions are rare in practice).

7.2 Notice Periods

All employees are entitled to receive notice of termination, with the exception of an employee committing a repudiatory breach of contract that justifies a summary dismissal (see **8.1 Wrongful Dismissal**). The notice period is usually specified by the contract, although there is a statutory minimum that is implied in the event that no greater express provision is made. The statutory minimum notice required from the employer is one week’s notice for each complete year or service, up to a maximum of 12 weeks. The statutory minimum notice from the employee is one week, provided that they have been employed for at least one month.

There is no general right to severance on top of notice, other than in a redundancy scenario (where employees may have a right to SRP and potentially an enhanced redundancy payment from their employer). Employment contracts frequently provide employers with the right to make a payment in lieu of an employee’s notice period (PILON), or to place the employee on “garden leave” for the duration of their notice period. There would also typically be provision made in bonus and share scheme documentation about the employee’s rights on termination (although there may also be discretion for different treatment in some circumstances).

In some termination situations, the parties agree to a severance package, typically in exchange for a waiver of claims from the employee (see **7.4 Termination Agreements**).

7.3 Dismissal for (Serious) Cause

There is no statutory definition of summary dismissal in UK law. The employment contract would usually outline a number of situations in which the employer would be entitled to summarily dismiss the employee without notice, which may include:

- gross misconduct;
- conviction of a criminal offence;
- bankruptcy; and
- loss of right to work in their role/in the UK.

“Gross misconduct” is also not specifically defined, but would typically involve serious or persistent disobedience or breach of the employee’s duties, often

(although not necessarily) with an element of dishonesty. There would typically be examples of gross misconduct set out in the employer's disciplinary policy. At common law, if the misconduct is to be sufficient to justify summary termination, it must amount to a repudiatory breach of contract by the employee.

Before an employee is dismissed summarily, the employer must establish that there are in fact grounds for such a dismissal. Usually this will require an investigation and a disciplinary hearing, at which the allegations are put to the employee and they have an opportunity to make their case. The employee should also be given the right to appeal against the dismissal decision.

7.4 Termination Agreements

In the UK, an employer and employee can agree to terminate the employment contract via a simple contract. However, this would not be sufficient to override the employee's statutory rights, for example as regards unfair dismissal or discrimination. Those statutory rights can only be waived if the appropriate statutory conditions are satisfied. One of these is that a termination agreement has been negotiated with an ACAS conciliator, which can result in a valid waiver of claims (and is known as a COT3 agreement). The other more common route in practice involves a "settlement agreement".

A settlement agreement must be agreed in writing and satisfy a number of other conditions as to its wording. Importantly, the employee must also receive independent legal advice from a lawyer, trade union official or other certified adviser, who must be appropriately insured, in order for the settlement agreement to constitute a valid waiver of the employee's statutory rights. The settlement should also relate to particular proceedings, meaning that a blanket waiver of all claims an employee could make is unlikely to be enforceable (and the agreement should instead set out specifically the claims that are being waived).

Employers commonly include NDAs in settlement agreements. These must however be carefully drafted, as there are legal restrictions on the scope of an NDA. It cannot, for instance, prevent an employee acting as a whistle-blower, or as a victim of a crime disclosing

information about that crime to prescribed individuals. There are also regulatory expectations of solicitors who advise their clients on NDAs, to ensure that they do not inappropriately restrict departing employees from speaking out about wrongdoing.

The ERB will render void any provision in a contract between an employer and a worker (including employment contracts and settlement agreements) that attempts to prevent the worker from making allegations or disclosures of information about harassment or discrimination. This also extends to disclosures about how the employer responded to such allegations or disclosures. Employers should therefore be mindful that, once this part of the Bill comes into force, any provision purporting to prevent discrimination related disclosures will not take effect.

7.5 Protected Categories of Employee

Dismissal of some employees for specified reasons may be "automatically unfair". These include where the sole or main reason for the dismissal is:

- that the employee is a whistle-blower (see the following);
- a business transfer (see the following);
- related to pregnancy, childbirth, flexible working or family leave;
- health and safety related;
- by reason of the employee acting as an employee representative or a trustee of an occupational pension scheme; and
- that the employee asserted a statutory right.

In some cases this means that the employee does not require the usual two years' qualifying service in order to claim unfair dismissal, and/or that the usual cap on unfair dismissal compensation does not apply.

Whistle-Blowing

Workers have the right to not be subjected to a detriment or be dismissed because they made a "protected disclosure". This is a disclosure of information that, in the reasonable belief of the worker, is made in the public interest and tends to show that a specified type of wrongdoing has occurred. These include criminal offences, dangers to health and safety, environmental damage or breach of any other legal obligation. The

disclosure must also be made in a prescribed manner, which may include to the employer or other responsible person, a regulator, a legal adviser or a third party, such as the media (although additional conditions must then be satisfied). Compensation in the event of a successful whistle-blowing claim is uncapped. Whistle-blowing protections will be strengthened by the ERB, with sexual harassment becoming a specific category afforded protection and with employers being obliged to take all reasonable steps to prevent sexual harassment, including third-party harassment.

Business Transfers

English law provides additional protections for employees affected by a business transfer or a service provision change. The legislation – known as the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations – automatically transfers the employment of all those assigned to the business being sold, or the function being in/outourced, to the purchaser or new service provider. The terms and conditions of employment of those who transfer are protected, and there are restrictions on dismissals or changes to terms and conditions that are made by reason of the transfer. There are also obligations on both parties to the transfer to inform and, in appropriate circumstances, consult with elected representatives of affected employees. Failure to comply with these obligations may result in a protective award of up to 13 weeks' uncapped pay per affected employee.

8. Disputes

8.1 Wrongful Dismissal

A wrongful dismissal occurs when there is a breach of contract in relation to a termination of employment. The most common grounds for a claim are as follows.

- Inadequate notice – typically where the employee is dismissed summarily on the basis of conduct alleged to be a repudiatory breach of contract, but which is subsequently found not to amount to such a breach.
- Early termination of a fixed-term contract where there is no notice or other provision entitling the employer to terminate the contract early.

- Breach of contractual procedures – although rare outside the public sector, there may be a contractual disciplinary procedure. If this is not followed, the dismissal would be wrongful.

If a claim is successful, the employee may be entitled to compensation. This is calculated using the net value of the salary and by considering any other contractual benefits to which the employee would have been entitled to. Damages in an Employment Tribunal are currently capped at a maximum of GBP25,000. There is no cap in a civil court. The employee may also seek a declaration and/or an injunction, although these cannot be awarded in an Employment Tribunal and can only be sought in civil courts. They will be granted in the unlikely event that damages are an inadequate remedy.

8.2 Anti-Discrimination

Under the UK Equality Act 2010, it is unlawful to discriminate against employees in relation to the following protected characteristics:

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion or belief;
- sex; or
- sexual orientation.

Discrimination can take a number of different forms.

- Direct discrimination – where an employee is treated less favourably because of a protected characteristic.
- Indirect discrimination – where an employer adopts a provision, criterion or practice (PCP) that is apparently neutral, but which puts employees with a protected characteristic at a disadvantage. The employer can objectively justify indirect discrimination if it is shown to be a proportionate means of achieving a legitimate aim.
- Harassment – where an employee suffers unwanted conduct related to a protected characteristic that has the purpose or effect of violating their dig-

- nity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.
- Victimisation – where an employee suffers detrimental treatment because they have done a protected act (such as making an allegation of discrimination).

There are also specific heads of claim for disability purposes, including discrimination arising from a disability and failure to make reasonable adjustments for a disabled employee.

The employee bears the initial burden of proving facts that could, in the absence of any other explanation, establish that discrimination has occurred. At that stage, the burden of proof shifts to the employer to prove that discrimination has not occurred.

If a discrimination claim succeeds, the usual remedy is compensation (which is uncapped). This is primarily based on the financial loss suffered by the victim, although the tribunal can also make an award for “injury to feelings”, and less commonly, aggravated or exemplary damages. The tribunal may also make a declaration about the rights of the employee and employer, and/or a recommendation for the employer to take steps to reduce the negative impact on the employee.

8.3 Digitalisation

Employment Tribunal hearings may take place on a wholly or partly remote basis. Whether or not to list a hearing to be heard remotely is a judicial decision. The Tribunal Rules of Procedure require the tribunal to consider whether a remote hearing would be “just and equitable”, and to ensure that those participating and members of the public can hear and see what the tribunal hears and sees.

The preferred audio-visual platform is the His Majesty's Courts and Tribunals Service (HMCTS) Cloud Video Platform (CVP). Remote hearings require electronic bundles of documents to be prepared in accordance with the tribunal's guidelines.

Currently, most preliminary hearings, including case management, strike-out applications and judicial mediations, are held as remote hearings by default.

Some simpler final hearings may also be listed as remote, although more complex cases of discrimination or whistle-blowing would almost invariably be in person.

Another newer area of digitalisation in employment litigation is the MyHMCTS portal. This portal allows tribunal users to file documents, bundles and other correspondence with the Employment Tribunal so that cases can be processed and reviewed digitally. It is now in force throughout the UK on a regional basis.

9. Dispute Resolution

9.1 Litigation

The UK has an Employment Tribunal system, which sits alongside the main court system and is intended to operate as a quicker, cheaper and more informal method of litigating employment disputes. The tribunals have statutory jurisdiction to hear more than 80 types of statutory employment-related claims, such as unfair dismissal, discrimination and whistle-blowing. They can also hear contractual claims if they arise out of, or are outstanding on, the termination of employment (but compensation is capped at GBP25,000). High-value breach of contract claims in an employment context are therefore more typically brought in the High Court, which also has jurisdiction for other non-statutory employment claims such as restrictive covenants disputes. The ERB will replace the previous three-month time limit for an employee to bring an Employment Tribunal claim with six months.

Appeals from Employment Tribunals on any question of law will be heard by the Employment Appeal Tribunal (EAT). Appeals from the EAT are then heard in the main court system, starting at the Court of Appeal.

Class actions (or “multiple claims”, as they are known in this jurisdiction) are a common feature within UK Employment Tribunals. The Employment Tribunal Rules of Procedure allow for multiple claims where the claims of two or more individuals give rise to common or related issues of fact or law, or if it is otherwise reasonable for their claims to be made on the same claim form. There is also the possibility of representative actions, where more than one person has the

“same interest” in a claim. Although the claim would be brought by one or more of those individuals, the decision will be made in respect of all of the represented individuals.

The rules of representation in the Employment Tribunal are not as strict as the main court system, where parties must be represented by either a solicitor or barrister with higher rights of audience. Rule 74 of the Employment Tribunal Rules of Procedure provides that a party can be “legally represented” (eg, by a barrister or a solicitor), or can be represented by a “lay representative” such as a trade union representative or any other non-legally qualified individual. Equally, employees frequently represent themselves in Employment Tribunals, when they would be known as a “litigant in person”.

9.2 Alternative Dispute Resolution

There are a number of well-established alternative dispute resolution (ADR) models available in the UK as a means of settling employment disputes. The most common ADR mechanisms include the following.

- **Negotiation** – this is flexible and informal. Discussions often proceed on a “without prejudice basis” so that, if no agreement is reached, the content of the negotiations will not be admissible in any subsequent court or tribunal proceedings. Any agreement is usually recorded in a settlement agreement (see 7.4 **Termination Agreements**).
- **ACAS conciliation** – the ACAS mandatory early conciliation procedure must be followed by claimants who present claims in the majority of Employment Tribunal proceedings (although the only mandatory element is the notification to ACAS; conciliation will only proceed if both parties agree to it). Conciliation involves a conciliator acting as a go-between for the parties, conveying settlement proposals and helping both sides explore the strengths and weaknesses of their respective positions. Conciliation remains available up to the day of the case being heard by the Employment Tribunal. A successful conciliation may result in a binding COT3 agreement (see 7.4 **Termination Agreements**).

- **Mediation** – this ADR mechanism involves a neutral third party managing or facilitating the process through which the parties negotiate a settlement. This may take the form of a private mediation or a judicial mediation in the Employment Tribunal. The latter brings the parties together before a trained employment judge who remains neutral and tries to assist the parties in resolving their disputes (which may include remedies that would be unavailable in the Employment Tribunal). The parties may engage in workplace mediation where there is an ongoing working relationship between the employee and the employer. The outcome of mediation would usually be non-binding, unless it also involves a settlement agreement (see 7.4 **Termination Agreements**).

Arbitration is not a very common method of ADR for UK employment disputes. An arbitration agreement entered into before the dispute (for example, via an arbitration clause in the employment contract) would not be effective to prevent an individual pursuing a claim to an Employment Tribunal. Nevertheless, and even where there is no such provision, parties can agree to submit disputes to arbitration after they have arisen. The outcome of arbitration is typically binding on both the parties (but again, could only be so in respect of statutory employment rights if a settlement agreement is used).

9.3 Costs

Costs do not “follow the event” in Employment Tribunals as they do in civil courts. This means that the parties typically bear their own costs, and tribunals will not usually order that the unsuccessful party cover the costs incurred by the successful party. Tribunals do however have the power to award costs against a party who has acted vexatiously or otherwise unreasonably in the conduct of the litigation, or where a claim or defence has no reasonable prospect of success.

Trends and Developments

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Eversheds Sutherland has one of the largest and most experienced UK employment teams in the market, with over 140 lawyers delivering high-quality, commercially focused advice across all areas of employment law. The firm supports clients on everything from day-to-day HR matters to complex, multi-jurisdictional projects involving employment, compensation, immigration and pensions. Their advice is pragmatic, user-friendly and grounded in a deep understanding of both legal frameworks and com-

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Introduction

The employment landscape in the UK is undergoing significant transformation, driven by a combination of economic influences, technological advancements and extensive legislative reforms. Evolving expectations around fairness, equality and responsible business practices are also contributing to the shift.

Major reforms proposed by the recently elected government are set to shape employment law in the coming years, with far-reaching implications for businesses and employees across all stages of the employment life cycle. These changes are prompting organisations to re-evaluate workforce engagement, compliance measures, staffing models and costs, processes and internal policies.

Concurrently, the dynamic economic climate is causing companies to continually review their workforce strategies and organisational structures, while at the same time the rapid advancement of artificial intelligence and evolving business and customer demands are reshaping the nature of work itself.

The Employment Rights Bill: Advancing Significant Legislative Reforms

The Employment Rights Bill (ERB), which is expected to become the Employment Rights Act later in 2025, contains over 28 employment law changes and is a key part of the UK government's ambitious plan to transform workers' rights. The scale, breadth and complexity of the reforms are significant, with a staged implementation over 2025, 2026 and 2027.

The ERB's measures span a wide range of workplace rights, including unfair dismissal, contractual change, redundancy, harassment, family leave, zero- and low-hour workers' rights, sick pay and flexible working. It strengthens the enforcement of employment law by the state and introduces significant new trade union rights.

It should be noted that many of the changes described below are subject to further consultation and more detailed regulations. As such, they may be amended before taking effect, and the timescales for implementation may be delayed. Some of the ERB's key changes include the following.

Unfair dismissal

While the government will consult on further details, from 2027 the existing two-year qualifying period for unfair dismissal will be removed, making it a day-one right. However, during an initial statutory probationary period, a reduced dismissal process is expected to apply to some, but not all, dismissals, along with a lower unfair dismissal compensation cap.

Practical implications

The effect of removing the qualifying period for unfair dismissal is that employees will be protected earlier in their employment, and employers will face a corresponding new legal exposure requiring them to ensure that all dismissals – regardless of length of service – are defensible and well-documented. Businesses will need to strengthen recruitment, performance management and probationary processes in readiness, including preparing for an increased volume of investigations to establish the reason for the dismissal and support procedural fairness. An increase in unfair dismissal claims is anticipated.

Redundancies and contractual change

A number of ERB changes will impact workforce restructuring plans. For example, it:

- widens the duty to collectively consult worker representatives on redundancies by counting affected employees across multiple sites, not just per establishment, when triggering the duty;
- doubles the maximum compensation for non-compliance with collective consultation;
- makes it automatically unfair to “fire and rehire” or “fire and replace” in certain circumstances, unless the employer is in severe financial difficulties and has no reasonable alternative; and
- makes dismissals in relation to certain other contractual changes subject to existing “ordinary” unfair dismissal rules, but with closer scrutiny over whether employers meaningfully consult and negotiate with employees.

So-called “fire and rehire” has been used less regularly in recent years due to reputational risks as well as additional penalties being introduced. These new automatic unfair dismissal protections are intended to further inhibit such practices. Only a very small num-

ber of businesses would be expected to meet the narrow financial justification.

In addition, the doubling of the maximum redundancy consultation penalty may also apply to such situations, which is part of the government's plan to make it potentially unaffordable to "buy out" employees when contemplating fire and rehire or fire and replace.

Practical implications

The new automatic dismissal protections will significantly limit an organisation's ability to enforce contractual change (in the absence of agreement), notably to certain pay, hours and holiday provisions. As a result, greater consideration of the wording of contracts, the offer of employee incentives, consultation processes and negotiation strategies is expected.

Doubling the maximum award for a failure to collectively consult on redundancies will also introduce significant new risks, and businesses should review their redundancy processes. The new threshold for triggering the duty to consult will require proactive assessment of all redundancies across the employer.

Trade unions

The government has committed to "resetting" the industrial relations framework, including reducing restrictions on trade unions, strengthening their protections and supporting strong collective bargaining rights. In pursuit of this reset, the ERB introduces some significant trade union-related changes, due to take effect in phases during 2025 and 2026, including:

- a right for unions to request, negotiate and enforce workplace access (including digital access) for their officials to meet, support, represent, recruit, communicate with or organise workers;
- a requirement that businesses inform all employees of their right to join a union;
- changes to the statutory recognition process (the process by which trade unions seek collective bargaining rights with an employer), making it easier for unions to gain recognition;
- deregulation of industrial action law by reducing the requirements a union must currently meet when organising lawful strikes, such as lowering the level of support needed in a ballot;

- new protections for trade union members, including for those taking part in industrial action; and
- new rights and protections for union workplace representatives when carrying out union duties.

Practical implications

A trend towards higher levels of union recognition and collective bargaining is anticipated, together with a potential increase in industrial action. Companies with existing trade union relationships should review the state of industrial relations and engagement and assess how they can best prepare. The new right for unions to access workplaces is a significant change, particularly for workplaces not currently unionised.

Other significant ERB changes

The ERB will also introduce other significant changes during 2026 and 2027, which will also influence the employment landscape.

- Zero- and low-hours contracts – a right for eligible workers on zero- and low-hours contracts (to be defined) to be offered a guaranteed hours contract that reflects the hours regularly worked over a reference period, rights to reasonable notice of shifts and shift changes and compensation for certain shift changes, and extending these rights to agency workers.
- Statutory sick pay (SSP) – SSP rights are extended by removing the lower earnings limit and three-day waiting period.
- Diversity – see Equality Reforms below.
- Flexible working – an employer's refusal to an application for flexible working on one of the eight existing statutory grounds must be reasonable.
- Family leave – paternity and unpaid parental leave will become day-one rights, as qualifying service periods are removed; the dismissal of women who are pregnant, on maternity leave, and during a six-month return-to-work period will be restricted, except in "specific circumstances" (to be defined), and bereavement leave rights extended.
- Enforcement – major changes are being made to the enforcement of workplace employment rights. The ERB provides for a new public body, the Fair Work Agency, to exercise existing enforcement functions on behalf of the government and also extends its powers. For example, for the first time,

the state will enforce holiday pay and SSP rights, and the government will be able to bring tribunal proceedings in place of a worker, provide workers with legal assistance and recover enforcement costs in some circumstances. In addition, the time limit in which most tribunal claims can be brought will be increased from three to six months.

Equality Reforms

The UK is undergoing a significant evolution in workplace equality, driven by a new legislative agenda and broader societal expectations. The government's reforms contained in the ERB and the anticipated Equality (Race and Disability) Bill are at the forefront of these changes, reinforcing the government's commitment to "strengthen equality at work for all".

The legislative approach aligns with wider trends and expectations around fairness, equality and responsible business conduct. Companies are increasingly being held to higher standards of accountability and transparency, necessitating a more proactive, and not just reactive, approach to equality issues.

Harassment changes: new employer duties

The government is committed to strengthening protections against workplace harassment, stating that "one in two of all women have been sexually harassed at work".

Measures to strengthen harassment protections had already been commenced by the previous government, with new legislation coming into force on 26 October 2024, which for the first time put a positive, proactive duty on employers to take "reasonable steps" to prevent sexual harassment of their employees. The new duty does not create a standalone claim, but claims for breach of the duty can be considered by a tribunal where it has upheld an employee's claim of sexual harassment, and compensation increased where an employer is found to have breached the preventative duty.

As a result of the existing new duty to take reasonable steps to prevent sexual harassment of their employees, a trend has already been seen of employers being more proactive to risk assess their current practices, ensure that issues are fairly investigated and put in

place risk mitigation measures. That trend is likely to continue and increase as a result of reforms in the ERB that will further strengthen the legal framework around workplace harassment, including:

- a requirement for businesses to take "all" reasonable steps to prevent workplace sexual harassment;
- the introduction of third-party harassment liability (whether related to sex or any other protected characteristic); and
- the express inclusion of sexual harassment under whistle-blowing legislation.

The government is also considering whether sexual harassment protections should be extended to volunteers, thereby broadening the scope of who is safeguarded under the law.

Extending gender pay gap reporting to include ethnicity and disability pay gaps

With the aim of tackling pay discrimination in the UK through greater transparency and accountability, employers with 250 or more employees have, since 2017, been required to report on their gender pay gaps. However, progress on reducing the gap has been slow, with the UK gap continuing to track higher than the European average. At the current rate, it is estimated that it could take at least another 40 to 50 years to fully close the gender pay gap. This is consequently an area of focus of the government, which has pledged to "go further and faster" to close the gender pay gap "once and for all".

One of the reforms seeking to speed up progress on reducing gender pay gaps is to require employers, on a mandatory basis from 2027, to prepare action plans setting out how they intend to address the causes of the gap and publish prescribed information relating to the plan.

It is also proposed that the pay gap reporting and action plan requirements be extended to ethnic minority and disabled employees from 2027.

In the meantime, developments in the EU have overtaken the UK's approach to gender pay transparency, introducing from June 2026 onwards for the first time across the EU a framework of gender pay transpar-

ency requirements. As well as reporting and information obligations, it includes:

- requirements for salary transparency at the recruitment stage;
- remedial action where there is a pay gap; and
- compulsory pay audits where a gender pay gap report shows an average pay gap of at least 5%.

Whether the UK government will ultimately legislate to mirror the higher requirements of the EU Directive remains to be seen. In the meantime, however, the global landscape continues to move towards greater transparency, including an increasing expectation amongst job applicants and workforces that pay information will be made available. This means that a trend is likely to be seen of UK businesses choosing to go beyond the existing UK requirements, including to achieve a consistent approach where they have other operating locations in the EU and beyond.

Equal pay litigation: an active landscape

The equal pay litigation landscape in the UK has remained active for many years and is often distinguished by high numbers of group action claims.

The current legal framework for equal pay has to date been confined to sex, with employees who experience pay disparities due to other protected characteristics having to instead seek redress through direct discrimination claims, with arguably greater evidential difficulty. The government proposes to change this by making the right to equal pay effective for ethnic minority and disabled people, with a call for evidence anticipated to inform that approach.

Looking ahead, a reshaping of the equal pay landscape is anticipated as a result of the proposed reforms. Greater transparency around pay disparities could result in more challenges and potentially more claims.

Practical implications

Businesses should act to ensure that they have the infrastructure in place to be able to respond to the equality reforms. For employers with 250 or more employees, planning measures should include reporting on gender, ethnicity and disability pay gap figures

for relevant employees and the preparation of action plans.

Technology Driving Workforce Change

The use of AI in the workplace is driving a wave of change in the job market by creating new roles, enhancing existing ones and prompting organisations to rethink how work is structured. Employers are implementing systems in an increasing range of scenarios that include recruitment, workforce management, redundancy and dismissal, etc. At the same time, a growing number of job applicants and workers are using AI to support their personal performance.

As a result, companies are launching a range of initiatives to align talent with evolving workforce needs, often including reskilling programmes, redefined job roles and restructuring programmes.

The legal framework: a pro-innovation approach to AI

To date, the UK government has adopted a pro-innovation regulatory approach, and there is currently no AI-specific UK employment legislation. Employers and employees must therefore look to the current legislative framework. This will include (but is not limited to) consideration of:

- potential claims under the Equality Act 2010, given that some AI tools have the potential to exhibit or learn bias that can result in (unintended) discriminatory outcomes in their decision-making processes;
- obligations to inform and/or consult trade unions/worker representatives before implementing new AI tools, specifically under health and safety legislation and/or any existing collective agreements; and
- compliance with data protection laws.

Despite calls from trade unions and others for further UK regulation (along the lines of the EU's AI Act), the government has restated its commitment to its pro-innovative stance for the time being. Separately, UK regulators, including the body responsible for data protection (the Information Commissioner's Office; ICO), are expanding their compliance activities. For example, the ICO plans to introduce a statutory code

of practice for organisations developing or deploying AI and automated-decision making.

Practical implications

As the adoption of new technology within workplaces continues to expand, businesses are adopting a number of practical strategies to navigate the new landscape, including:

- carrying out thorough due diligence and ongoing testing of AI tools, including data protection and equality impact assessments;
- ensuring human oversight of output;
- having clear employment policies on AI use;
- adopting transparent workforce communication strategies for any new AI tools, including compliance with any legal information and consultation obligations;
- including appropriate warranties and indemnities in contracts with suppliers; and
- assessing the impact of new AI tools on organisational values including wellbeing, equal opportunities, etc.

Final Remarks

UK employment law is in a period of significant change. During this period, organisations must proactively respond and adapt, as the changes will directly impact and shape future workforce strategies.

It will be essential for legal, operational and HR teams to operate in close partnership, adjusting workforce plans, reviewing costs and policies, updating contracts, and ensuring ongoing legal compliance so that all aspects of the workforce strategy remain in step with the evolving legal landscape.



Law and Practice

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Ogletree Deakins is a labour and employment law firm representing management in all types of employment-related legal matters. Ogletree Deakins has more than 1,000 attorneys located in 60 offices across the USA and in Europe, Canada and Mexico.

The firm represents a diverse range of clients (from small businesses to Fortune 500 companies), has been recognised for its expertise and achieves exceptional rankings year after year.

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1. Employment Terms

1.1 Employee Status

The Fair Labor Standards Act (FLSA) exempts certain white-collar workers from the statute's minimum wage and overtime requirements. Employers are not required to pay minimum wages or overtime pay to executive, administrative, professional or certain computer or outside sales employees who satisfy the salary level and other requirements to meet one of the white-collar exemptions. Employees who do not meet the FLSA exemptions (generally blue-collar workers) are entitled to minimum wage and overtime under the FLSA, as well as any state or local minimum wage or overtime requirements.

1.2 Employment Contracts

Employment contracts are not required. Where a written contract does not exist, courts may imply terms governing the employment relationship from statements made in employee handbooks, offer letters and/or oral representations as provided by state laws.

In the American workplace, employment is generally assumed to be "at will", meaning either the employee or the employer can end the employment relationship at any time. For those employment relationships that are under contract, most are in writing – although, depending on applicable state law, the employment contract need not be in writing to be enforceable. State law determines whether employment is "at will" and may prescribe what an employment contract must include.

There is no federal law that requires employers to provide specific written information to employees at the time of hire, with the exception of certain disclosure requirements in the context of background checks. However, some states require employers to disclose information such as the employee's wages or regular payday at the outset of employment.

1.3 Working Hours

Under the federal FLSA, most employers are required to pay overtime – at a rate of time-and-a half of the employee's regular pay – for each hour worked that exceeds 40 hours per week, unless the employee is statutorily exempt. Some states expand these terms and conditions to include overtime in excess of eight hours in one day or overtime for work performed on weekends. The FLSA limits the types of flexible scheduling arrangements available. Maximum working hours for minors are imposed by federal and state laws.

1.4 Compensation

Minimum wage requirements are imposed by federal and state laws. The federal minimum wage for employees covered by the FLSA is currently USD7.25 per hour. States and localities may impose minimum wages above the federal minimum wage. The federal government does not otherwise intervene in decisions regarding increases, bonuses or other types of compensation. State laws regulate the timing of compensation payments and permissible deductions from pay.

1.5 Other Employment Terms

Vacation Pay

Vacation and vacation pay are subject to very few regulations and are not required under federal law. However, most employers do provide some paid vacation leave, which is regulated by state and/or local law. State laws will often determine whether an employee is entitled to accrued vacation pay at the conclusion of the employment relationship.

Family/Medical Leave

The federal Family and Medical Leave Act (FMLA) requires employers of a certain size to provide unpaid leave for maternity, taking care of a medical condition or caring for family members, including covered servicemembers. Paid sick leave is not required by federal law. Under the FMLA, an employee is eligible for unpaid leave if the employee has been employed for at least 12 months by the employer and for at least 1,250 hours of service during the previous 12-month period. An eligible employee is entitled to:

- up to 12 weeks of unpaid leave per year;
- continuing health insurance benefits during leave (if already provided by the employer); and
- job protection (which guarantees an employee can return to the same job or its equivalent).

Leave related to a serious health condition may be taken intermittently or on a reduced leave schedule when medically necessary.

Some state and local family leave laws provide more generous leave benefits than the FMLA by:

- covering smaller employers;
- extending the time for unpaid leave;
- requiring paid leave in some instances; and
- permitting intermittent leave for maternity.

Workplace Accommodations

Additionally, depending upon the type of employer, the Americans with Disabilities Act (ADA) requires an employer with the requisite number of employees to provide a disabled employee with reasonable accommodations unless said accommodations would impose an undue hardship on the employer. Reasonable accommodations can include a leave of absence,

a modified work schedule, modified duties, transfer to a vacant position or (in some instances) unpaid leave beyond the 12 weeks provided under the FMLA.

Similarly, the Pregnant Workers Fairness Act (PWFA) requires an employer with the requisite number of employees to provide a reasonable accommodation to a qualified employee's or applicant's known limitations related to, affected by or arising from pregnancy, childbirth or related medical conditions, unless said accommodations would impose an undue hardship on the employer. "Related medical conditions" are currently defined broadly.

Covered employers are also required under Title VII of the Civil Rights Act to provide accommodations for an employee's or applicant's sincerely held religious practice or belief, unless the accommodation would create an undue hardship for the employer. "Undue hardship" in the religious accommodation context is analysed differently than an accommodation under the ADA or the PWFA, and the US Supreme Court recently clarified the term to require a heightened showing by employers.

The federal PUMP for Nursing Mothers Act (the "PUMP Act") also requires most employers to provide a private place to pump at work for a year after a child's birth, along with a reasonable break time to do so.

Confidentiality/Non-Disparagement

Traditionally, there have been no limitations on confidentiality and non-disparagement requirements. However, there are increasing concerns with regard to such requirements in the employment arena, especially around the extent to which they might prevent disclosure of harassment allegations. A recent ruling by the National Labor Relations Board (NLRB) limits confidentiality and non-disparagement terms – even if agreed – between employers and non-management employees. This is an area that is still evolving under US law.

Employee/Employer Liability

In general, employees may be held liable for their actions, depending on the nature of the act and the context in which it occurred, though some federal stat-

utes (eg, Title VII of the Civil Rights Act) do not provide for individual liability. Under the American doctrine of respondeat superior, an employer may be held:

- vicariously liable for an employee's acts that are committed within the scope of employment; or
- liable for negligence in the hiring, supervision or retention of an employee, as determined by state law.

2. Restrictive Covenants

2.1 Non-Competes

Although non-competition agreements have been the subject of recent federal regulatory and congressional attention, non-compete law is presently regulated at the state level. In some states, non-compete agreements are governed entirely by common law doctrines, whereas other states have statutory schemes regulating (or entirely prohibiting) non-compete agreements.

A growing number of states have enacted legislation in recent years to limit the use of non-compete agreements or impose additional obligations on employers seeking to enforce them. Among other things, state non-compete statutes may:

- ban non-competes entirely;
- prohibit the use of non-competes for low-wage earners;
- require specific notice to employees;
- set temporal limits on non-compete covenants; and/or
- impose heightened consideration requirements.

Meanwhile, some states have adopted statutes governing the use of non-competes for specific industries or professions, such as physicians. For details of the special rules that apply to non-competes governing physicians in the State of Texas, please refer to the [USA – Texas Trends & Developments](#) chapter in this guide.

In general, to be enforceable, a non-compete covenant must be tailored to protect a company's legitimate, protectable business interests and be reasonable in

scope. Protectable business interests typically include trade secrets and other confidential information, customer relationships and company goodwill. Conversely, companies may not use non-compete agreements to stifle fair competition or restrict employee mobility; these would not be considered protectable interests.

In determining whether a non-compete is reasonable, courts typically examine the covenant's temporal scope, geographic scope and substantive scope. If a non-compete is determined to be unreasonable, some states give courts broad discretion to reform or "blue pencil" the agreement, whereas courts in other states do not.

The permissible length of a non-compete agreement varies greatly from state to state. In states where restrictive covenants are governed by the common law, one to two years is generally within the time period that courts will consider reasonable. Meanwhile, some state statutes limit non-compete agreements to 12, 18 or 24 months.

The permissible scope of a non-compete covenant is typically determined on a case-by-case basis and will vary depending on the employer's industry and the employee's duties. In general, a non-compete should be tailored to the employee's footprint and duties for the employer.

By way of example, if the employer's business is a storefront or a physician's office that serves customers or patients from a defined geographic area, the geographic scope may be limited to some number of miles or counties surrounding the business. Similarly, if a sales representative's duties are limited to selling products and services in a particular territory, the geographic scope of the non-compete likely could not extend into locations beyond that territory. On the other hand, if an employer's business is national in scope and the employee's duties impact the employer's operations throughout the entire company, a nationwide non-compete may be permissible in some states.

A non-compete should generally be limited to the areas of the employer's business the employee worked in or acquired confidential information about. Typically,

this will require limiting the non-compete covenant to performing the same or similar type of duties at a competitive business. A non-compete that seeks to prohibit an employee from accepting employment in any capacity within a particular industry is likely to be found over-broad in many states.

If a non-compete is determined to be over-broad in scope, it may be held to be facially unenforceable in many states. In some states, courts have discretion to “reform” the covenant by narrowing it to a reasonable scope. By way of example, if a court determines that a 50-mile non-compete is over-broad, the court may narrow the covenant to a smaller geographic territory. In some other states, courts are strictly limited to “blue pencilling” the agreement by deleting words or phrases, but revisions and additions to the language are not permitted.

Regardless of the approach a state takes to curing or invalidating over-broad agreements, employers should generally endeavour to draft their agreements as narrowly as possible while protecting their legitimate, protectable business interests.

2.2 Non-Solicits

Customer Non-Solicits

Like non-compete covenants, customer non-solicitation covenants are governed by the common law in most states – although some states have statutes limiting their use. Non-solicits must also be tailored to an employer’s protectable business interests and be reasonable in scope. However, because the scope of the customer restrictions defines the breadth of the agreement, most states do not require a geographic restriction for non-solicitation covenants.

In general, a customer non-solicit should be limited to the customers the employee had material business contact with and/or acquired confidential information about. Some states require the customer to be an active customer in order to fall within the scope of a non-solicit, whereas others permit non-solicits to extend to active prospects.

Employee Non-Solicits

Employee non-solicitation agreements must also be reasonable in scope and protect the employer’s legiti-

mate business interests. Protecting against employee departures is typically not considered a protectable business interest, standing alone. Thus, a non-solicitation covenant that extends to a company’s entire workforce may be unenforceable in some states. Best practice for drafting employee non-solicits is to limit them to employees with the ability to harm the company while working at a competitor (such as those employees with access to confidential information, customer relationships, etc) and those employees with whom the departing employee had material contact.

3. Data Privacy

3.1 Data Privacy Law and Employment Data Protection Laws

Employee data protection laws in other countries are often much more restrictive than in the USA. However, the USA is trending towards more data protection obligations, with an assortment of data protection laws that regulate the collection, use and transfer of employees’ personally identifiable information (PII) and health information. These laws are not limited to protecting active employee information, so employers’ obligations extend to former employees, job applicants, independent contractors and other non-employee groups (eg, customers) whose personal information they may obtain.

There are a number of federal data protection laws that impact the employment relationship, including:

- the Health Insurance Portability and Accountability Act (HIPAA), which governs health plan and medical provider conduct, and dictates the circumstances under which protected health information (PHI) may be released and to whom it may be released;
- the Genetic Information Nondiscrimination Act (GINA), which covers genetic information;
- the ADA, which limits when an employer may obtain medical information, how such information may be used and disclosed, and how it may be stored and retained;
- the FMLA, which limits the use and disclosure of medical information collected to administer leaves under the law;

- the National Labor Relations Act (NLRA), which prohibits employers from interfering with workers' rights to engage in concerted activity, including through social media; and
- the Fair Credit Reporting Act (FCRA), which applies to those who use consumer reports, including background checks conducted on applicants and employees.

Another federal law, the Privacy Act 1974, limits the type of information that federal government employers may keep on their employees.

Personal Information Requirements

Most US states impose requirements related to personal information. Every state has enacted laws defining PII and requiring notification of security breaches involving PII. Many states have enacted laws that require companies to keep PII secure and to destroy or dispose of PII – or otherwise make it unreadable or undecipherable – once they are finished with PII they hold.

Many states have also enacted laws to protect social security numbers, with limited exceptions for employers, and some have laws providing expanded protections to PHI or other health information. A significant number of states have also enacted employee social media privacy laws, which limit when and how employers may use social media information about their employees.

Certain states have laws that represent new approaches to data protection and have become a model for similar legislation across the nation. One such example is Illinois, which imposes conditions on the collection and use of biometric information, including fingerprints, retina scans and facial geometry scans (which could be used to identify individuals through photographs). The Illinois Biometric Privacy Act (BIPA) has a number of requirements, such as written consent and disclosure of policies related to biometric data collection and usage. It also allows private individuals to bring suit and recover damages for violations.

Elsewhere, nearly half of US states have established broad consumer privacy laws, but to date the laws generally provide an exclusion for employment infor-

mation outside California. In contrast, the California Consumer Privacy Act 2018 (CCPA), as amended by the California Privacy Rights Act 2020, established rights for California residents, including requirements for employers with regard to the information they hold on employees, applicants and contractors. Employers must:

- develop a comprehensive programme to monitor how data is collected, used, shared and destroyed throughout the employment relationship;
- communicate with California residents about the data, the programme employers have developed, and the rights residents may exercise; and
- process rights requests when received.

New York City and several states place restrictions on the use of AI when processing employment information, particularly in the hiring process. These laws and ordinances place constraints – as well as notice and, in some cases, consent obligations – on those employers using tools that conduct automated decision-making.

Laws concerning personal information and data protection are changing rapidly. In addition to proposed national legislation, new rights and duties for employers are expected in a number of states during the coming years.

4. Foreign Workers

4.1 Limitations on Foreign Workers

US employers are prohibited from hiring or continuing the employment of a worker who is not authorised to work in the USA. The Immigration Reform and Control Act of 1986 (IRCA) places the burden of immigration compliance on employers and prohibits the hiring, recruiting or referring for a fee of individuals who are not authorised to work in the USA. It also requires employers to confirm the identity and employment eligibility of new employees.

Subject to very few exceptions, a foreign worker must have a work visa permitting them to work in the USA. Employers have the option of participating in the immigration sponsorship process. However, they

may not directly ask about a candidate's national origin, citizenship or immigration status during the hiring process. Instead, employers must use neutral questions to determine whether the applicant requires immigration sponsorship to begin working or to continue employment in the future. Acceptable questions include:

- "Are you legally authorised to work in the USA?"; and
- "Do you now, or will you in the future, require immigration sponsorship for work authorisation?"

If a candidate answers affirmatively to the second question, the employer may ask more direct questions about the applicant's immigration status and work authorisation in order to make an informed hiring decision.

4.2 Registration Requirements for Foreign Workers

Foreign nationals can obtain non-immigrant (temporary) visas and immigrant (permanent) visas to work in the USA. Most foreign nationals initially enter the USA on a non-immigrant visa. Some common employer-sponsored non-immigrant visas include the H-1B, L-1 and TN non-immigrant visas.

5. New Work

5.1 Mobile Work

Employers are free to allow employees to work in mobile settings as long as the arrangements comply with generally applicable federal, state and local laws, especially tax requirements. Companies must be mindful of leave and return-to-office issues under the FMLA and ADA as well as state and local leave laws, safety issues under the Occupational Safety and Health Act (the "OSH Act"), workers' compensation for work-related injuries that occur at home, and poster and notice requirements.

Employee tax compliance is a major issue. Employers are generally required to withhold income tax in the state where an employee performs services, whether on-site or remotely. This means employers must stay informed about tax withholding rules in every state

where they have employees. For instance, a South Carolina-based employer with an employee working remotely in Georgia may still owe Georgia income tax withholding. Some states have reciprocal agreements, allowing them to tax only their own residents, even if those residents work in another participating state. Others apply the "convenience of the employer" rule, taxing remote workers based outside the state if they are working remotely for personal reasons rather than business necessity. Employers can still be liable for withholding taxes even if they are unaware an employee has relocated. States expect employers to know where their employees are working, and failure to withhold can lead to retroactive penalties. To monitor remote work, employers may rely on digital indicators like IP login data.

Return-to-office mandates create legal issues and risks, though some courts are finding in favour of employers, ruling that indefinite remote work is not a reasonable accommodation under the ADA. A federal court in Virginia denied a request for remote work as an ADA accommodation, as on-site presence was deemed an essential job function. The ruling affirms that employers can require in-person work if it was essential pre-pandemic, even if remote work was temporarily allowed during COVID-19. It also reinforces that courts generally defer to an employer's judgment on what job functions are essential, including physical presence. A federal court in Kansas ruled that an employee's request for indefinite remote work under the ADA was not reasonable since in-office presence was essential and the employee could not return soon. The court clarified that allowing temporary remote work does not make indefinite remote work a required accommodation. It also found that the absence of an in-office requirement in job descriptions or policies does not determine whether physical presence is essential – other factors, like job duties and past practices, may be considered.

On the other hand, A federal court of appeals reversed a victory for an employer, holding that an employee's refusal of remote work as the only offered accommodation did not end the interactive process. The employer never asked why the accommodation was unreasonable, and the Rehabilitation Act (which applies the similar standards to the ADA) does not

require employees to provide unrequested information. As a result, the court ruled that whether remote work was a reasonable accommodation must be decided by a jury, not by law.

Companies must take care to comply with reimbursement requirements in the growing list of states with those requirements. Currently, 11 states have laws requiring reimbursement of certain work-related expenses: California, Washington, DC, Illinois, Iowa, Massachusetts, Minnesota, Montana, New Hampshire, New York, North Dakota, Pennsylvania, South Dakota and Washington (plus the city of Seattle, Washington).

Wage and hour issues remain key for mobile work. Companies should use a system for hourly employees that pays for all scheduled time, requires accurate reporting of worked time and does not discourage or impede accurate reporting. Employers should be mindful to set policies and procedures for meal break compliance.

Working temporarily in a location can trigger paid sick leave obligations for remote employees. By way of example, employees working for 30 days in a year in California gain coverage of the state's paid sick leave law. Remote employees working in Chicago and New York must receive sexual harassment prevention training under state and local laws.

Mandatory federal posters for agencies and laws must be posted or provided in a way that allows employees in mobile settings to access them, including on an intranet or directly via email. State and local laws and agencies require certain posters as well, so employers should consult and research each applicable state labour department.

Employers should be mindful of cybersecurity issues for mobile employee arrangements. Options to mitigate risks include using an encrypted virtual private network (VPN) and banning external drives.

5.2 Sabbaticals

In the past, many private sector employers traditionally did not utilise sabbaticals outside academia and other specialised areas. However, some employers

are using sabbaticals more frequently in order to attract and retain talent that is more mobile and willing to change jobs.

Sabbatical details, requirements and eligibility vary greatly and mostly depend on the discretion of the employer, unless a union's collective bargaining agreement addresses the issue. Federal, state and local laws do not require sabbaticals, but various obligations or questions may be triggered by the use of sabbaticals.

Typical factors and decisions for sabbaticals include:

- which employees are eligible?
- length of employment before eligibility;
- length of sabbatical;
- whether the sabbatical is fully paid, partially paid or unpaid;
- whether the sabbatical ends or impacts deferred compensation, and the resulting tax consequences; and
- the availability of benefits and benefit accrual rules during the sabbatical.

Continued employee qualification and eligibility for health and other benefits are among the most challenging issues when it comes to sabbaticals. Many health insurance programmes require continued full-time employment and/or continuous service. Employees on sabbatical may be unwilling or unable to forgo such benefits, so employers will have to ensure the benefits can apply to sabbaticals or find another acceptable alternative. The same challenges can arise for insurance coverage. Employers should determine if employees on sabbatical can maintain health, disability and life insurance, if a modification to policy requirements can be made or if a substitute policy can be issued.

5.3 Other New Manifestations

Many companies are using "new work" approaches, including wellness programmes, desk sharing and fractional employees, to attract and retain talent. These approaches have some benefits and potential pitfalls. One trend seems to have ended: open floor plans. Employers and employees are realising that boundaries and privacy can help with productiv-

ity and morale. Companies pushing return-to-office mandates have had to use desk sharing given space limitations. That approach can increase collaboration and sociability and optimise pricey square footage, but there are also challenges involving confidentiality, privacy and hygiene issues.

Companies are also utilising fractional employees, individuals who work part-time for one or more employers, usually offering specialised expertise (eg, financial, legal). This approach offers flexibility and cost-savings for employers, but there are attendant issues involving preserving confidentiality, employee morale, and classification (employee or contractor).

One concrete example of a new work approach is unlimited paid time off (PTO) or unlimited vacation. This has been attractive to some employers and companies because it highlights autonomy and responsibility. However, one challenge has been that some employees feel they have less ability to use PTO, whereas some employers have encountered what they believe to be excessive use of the policy. Unlimited PTO can also create unexpected legal challenges. In jurisdictions requiring payment of PTO or vacation upon termination, companies can face claims for large payments on the basis of unlimited PTO. Employers using this approach should consider adding provisions that require some employer approval on the timing and length of PTO, criteria for any payout at termination and interaction with other leave (medical or family).

Although wellness programmes can help with workforce morale, there are potential legal issues to be aware of. Making wellness programmes voluntary instead of mandatory helps avoid some risks, as does being careful about the type and amount of information requested and collected.

6. Collective Relations

6.1 Unions

The NLRA, enacted in 1935, was designed to provide rules to limit “industrial warfare” following a period of violence and unrest between employers and employees. The NLRA protects employees’ rights to engage

in “protected, concerted activity” in the workplace regarding the terms and conditions of their employment and, if they choose, to organise a union.

Although 29.5% of American employees belonged to unions in the 1960s, union membership in the private sector has declined steadily since then and currently stands at just 5.9%. In contrast, the percentage of union employees in the public sector has grown markedly in the past 20 years and currently stands at 32.2%.

The NLRA prohibits private sector employers from interfering with, restraining or coercing employees in the exercise of their rights to organise a union or their rights to engage in other concerted activities for mutual aid or protection. The NLRA also protects employees’ right not to organise a union and not to engage in other concerted activities.

6.2 Employee Representative Bodies

Section 9 of the NLRA prescribes general rules concerning the election process. The NLRB and the courts have also developed processes through which employees have the opportunity to cast an informed vote in an election to determine a union’s representation status.

In December 2023, the NLRB issued new guidelines on the conduct of representation elections, thereby revising rules implemented under the prior administration that were considered by unions to have tilted the process in favour of employers. The newly revised rules seek to advantage union interests in the election process. This is not surprising, as the administration that passed the rules was openly pro-union, and decisions from the NLRB through 2024 reflected such pro-union leanings.

Once elected, the role of the union is to represent the interests of the employees in the bargaining unit fairly and negotiate the terms and conditions of employment with the company. These include wages, benefits, and other terms and conditions such as seniority, overtime and work schedules.

Under the NLRA, subjects of bargaining are divided into two categories:

- “mandatory” (which the parties must negotiate); and
- “permissive” (which neither party can be forced to negotiate).

6.3 Collective Bargaining Agreements

When employees choose a union to represent them, the employer and the union are required to meet at reasonable times and places to negotiate in good faith to reach a binding agreement that sets forth the terms and conditions of employment. The employer and union are not required to adopt any proposal made by the other; however, they are required to bargain in good faith to try to reach an agreement. Failure to reach an agreement may result in a strike or lockout or could prompt the union to resort to other economic weapons.

If the parties do not reach agreement despite good-faith bargaining, the employer may declare an impasse and unilaterally implement its bargaining proposals. The union could, however, file an unfair labour practice charge with the NLRB if it contends the employer failed to bargain in good faith. The NLRB can order the employer back to the bargaining table and to rescind any unilateral changes the employer may have made based on a claim of impasse.

For workforces that are organised, bargaining typically takes place at the company level. However, some employers bargain with unions through associations, which may result in a uniform agreement for certain types of work performed by numerous different employers (eg, across an industry such as construction).

7. Termination

7.1 Grounds for Termination

Employment is generally presumed to be “at will”, meaning either the employee or the employer can end the employment relationship without notice at any time for any reason – be it good or bad – or for no reason at all. There are four major exceptions to the “employment at will” doctrine – namely, where there is:

- a dismissal due to discrimination or retaliation that is in violation of a federal, state or local law;
- an express or implied contract, including a collective bargaining agreement;
- an implied covenant of good faith and fair dealing; and
- a discharge that would violate the state’s public policy – for example, firing an employee for seeking worker’s compensation benefits following a work-related injury.

The laws surrounding these exceptions vary considerably by state.

Unless provided for by the terms of an employment contract or collective bargaining agreement, procedures do not differ depending on the grounds for dismissal.

Lay-Offs

In the USA, the term “lay-off” is often used for instances in which an employer eliminates a number of jobs owing to economic reasons or a business need to restructure.

Although a group of at-will employees may generally be dismissed by an employer at any time, the federal Worker Adjustment and Retraining Notification Act (the “WARN Act”) and certain state law equivalents require employers to give employees advance notice of a lay-off or plant closing in some circumstances. In addition, if an employer seeks a release of federal age discrimination claims in connection with an exit incentive programme or other group employment termination, the employer must provide certain disclosures to the employees being separated. Lastly, an employer may have additional obligations when dismissing a group of employees under a collective bargaining agreement or – in some cases – if the employee works in the public sector.

7.2 Notice Periods

Unless specified in an employment contract or collective bargaining agreement, there generally are no notice requirements. There is, however, one caveat – in some circumstances involving a plant closing or mass lay-off, an employer may have to give employees 60 days’ notice of the lay-off under the WARN Act

or an applicable state law equivalent. Some of these analogous state laws are more expansive in terms of coverage and employee rights.

Similarly, except where provided for by an employment contract, severance pay is not required. Employees are generally not entitled to compensation on dismissal beyond pay up until their final day of employment and any other business expenses owed to them at the time of dismissal. Depending on the law of the state in which the employee works, an employee may be entitled to receive temporary and partial wage replacement (known as “unemployment compensation”), which is generated by the state government from a special tax paid by employers.

7.3 Dismissal for (Serious) Cause

Given that employment is generally presumed to be “at will”, an employer may dismiss an employee for any reason, with or without cause or notice. The only exceptions are where:

- any applicable employment contract or collective bargaining agreement provides otherwise; or
- the employee is dismissed for a reason proscribed by federal, state or local law (eg, an employee’s age, disability, race, sex or national origin).

In a collective bargaining relationship, there are recognised principles of just cause. The employee must have notice of the rule that is the subject of the dismissal, the rule must be reasonable, the employer must have conducted a fair investigation and ascertained evidence of the violation, and the penalty must fit the “crime”. The determination of just cause must include an assessment of the prior points, in addition to the employee’s seniority and work record.

7.4 Termination Agreements

Termination agreements are permissible. In general, there are no specific procedures or formalities required for termination agreements.

The Older Worker Benefit Protection Act (OWBPA) provides procedural safeguards where an employer seeks a paid release of federal age discrimination claims. Additionally, special rules exist for the release of claims based on violations of the FLSA, which

requires minimum wage and overtime pay for most employees. Several federal agencies, such as the SEC and the NLRB, have also brought enforcement actions against employers whose release agreements impede a person from exercising their right to provide truthful information to governmental or regulatory bodies.

7.5 Protected Categories of Employee

There is no specific protection against dismissal for particular categories of employees, except where provided by the anti-discrimination laws, the NLRA, or other federal or state statutes.

8. Disputes

8.1 Wrongful Dismissal

Employment is generally assumed to be “at will”, meaning either the employee or the employer can end the employment relationship at any time for any or no reason; this is determined by state law. However, there are four common exceptions, which are discussed in 7.1 Grounds for Termination. Therefore, employees may have grounds for a wrongful dismissal claim in situations where employment is terminated as a result of whistle-blowing, filing a worker’s compensation claim or refusing to engage in unlawful conduct.

The remedies available depend on the law under which those claims are asserted. However, they generally include some combination of back pay, lost benefits, front pay, liquidated damages, compensatory damages (including emotional distress damages), punitive damages, and attorney’s fees and costs – in addition to equitable relief such as reinstatement.

8.2 Anti-Discrimination Discrimination

Employment discrimination is prohibited by a variety of federal, state and local laws. Federal law prohibits employment discrimination based on the protected characteristics of race, colour, national origin, sex (which includes sexual orientation and gender identity), pregnancy, religion, age, disability, citizenship status, genetic information and military affiliation. Federal law also prohibits retaliation against employees who oppose unlawful discrimination (or who participate in proceedings challenging unlawful discrimination) or

who seek benefits under federal law (eg, under the ADA, the PFWA, the PUMP Act or the FMLA).

Most state and some local laws contain analogous prohibitions. Certain jurisdictions have expanded the list of protected categories to include such characteristics as marital and/or familial status, political affiliation, language abilities, use of tobacco products, firearm ownership and public assistance status, as well as height, weight, hairstyles and personal appearance.

Prohibited Practices

Prohibited discriminatory practices generally include bias in all terms, conditions and privileges of employment, including hiring, promotion, evaluation, training, discipline, compensation, classification, transfer, assignment, lay-off and discharge. Where disadvantageous to the employee, these activities are often referred to as “adverse actions”. To demonstrate discrimination, an employee must establish a connection between the protected characteristic and the adverse action or condition.

Prohibited discriminatory practices also include failing to reasonably accommodate an employee’s request for a disability or religious accommodation. The standards for evaluating each type of accommodation under federal law differ, though both statutes use the term “undue hardship”. The standard for religious accommodations is an evolving area under US law.

Harassment

Workplace harassment is also unlawful. Although many harassment cases involve allegations of sexual harassment, harassment based on other protected characteristics may also be actionable. Employer liability in harassment cases depends on:

- who engaged in the harassment;
- whether the harassment resulted in a tangible employment action; and
- the employer’s efforts to prevent and correct the harassment.

Retaliation

It is unlawful to retaliate against employees who raise concerns about unlawful discrimination or harass-

ment. An employee need not prove that discrimination occurred in order to prove that an employer’s response to the employee’s complaints constituted unlawful retaliation. Rather, an employee simply needs to prove a causal connection between the complaints and the adverse action.

Proving Discrimination

Generally, employees must first prove that:

- they are a member of the protected class;
- they were qualified for the job and/or satisfactorily performed the job;
- they were subjected to an adverse employment action; and
- the adverse employment action occurred under circumstances giving rise to an inference of discrimination.

The employer must then establish that the adverse employment action was taken for a legitimate, non-discriminatory reason. If the employer does so, the employee must prove that the reason offered by the employer was a cover-up (or pretext) for discrimination. An employee is also generally required to show that the employer intended to discriminate, except when claiming a particular practice or policy has a disparate impact based on a protected characteristic.

There are also affirmative defences to discrimination claims that may apply in limited circumstances and depending on the nature of the claim. Employers are generally allowed, for example, to discriminate on the basis of sex, age, religion or national origin if such a characteristic constitutes a bona fide occupational qualification (BFOQ). A BFOQ exists when a specific characteristic is necessary for the performance of the job. Gender may be a relevant factor, for example, in job performance for a model of women’s clothing. The BFOQ defence is very narrowly restricted and should not be relied on in most situations.

Remedies available for discrimination claims depend on the law under which those claims are asserted, but generally include some combination of back pay, lost benefits, front pay, liquidated damages, compensatory damages (including emotional distress damages),

punitive damages, and attorney's fees and costs – as well as equitable relief such as reinstatement.

8.3 Digitalisation

Employment disputes may include in-person or virtual depositions. Virtual court proceedings are increasingly permitted in the USA, including court conferences, settlements and mediations, and trials. Even where the proceeding itself is in person, more judges are allowing witnesses to appear virtually. This is generally a court- or judge-specific determination – although the parties may agree to conduct depositions or mediations virtually.

9. Dispute Resolution

9.1 Litigation

Employment litigation is a robust practice, with tens of thousands of lawsuits filed by employees annually. Most employment lawsuits take place in federal court pursuant to federal statutes, such as Title VII, the ADA and the FLSA. However, many employment claims may also be filed in state court, and certain state statutory schemes make state court litigation more common than in other states.

In a routine single-plaintiff employment discrimination or retaliation case, an employee typically must file a charge of discrimination with the EEOC (or analogous state agency) prior to filing suit. The agency will investigate the claim and may choose to litigate the claim in federal court on behalf of the employee, or it may issue the employee a “right to sue” letter authorising the employee to file suit in court.

Class actions are also permitted for some employment claims. Whether to certify a class action is often a hotly contested issue, with significant financial implications in certain types of cases, such as wage and hour disputes. In determining whether to certify a class, courts consider a number of elements, including whether there are common issues of law or fact that apply throughout the proposed class.

9.2 Alternative Dispute Resolution

Arbitration agreements are used by many employers as an alternative to litigation. Federal law generally favours the enforcement of arbitration clauses, and courts will often compel the parties to arbitrate where an arbitration agreement exists. In addition, employers generally may enforce arbitration agreements containing class action waivers. However, certain types of labour and employment claims (eg, sexual harassment and assault claims and unfair labour practice claims) are not subject to arbitration.

9.3 Costs

A number of employment statutes, including federal anti-discrimination laws, typically permit the prevailing party from recovering attorney's fees and costs.

USA – CALIFORNIA



Law and Practice

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Shook, Hardy & Bacon LLP has a national employment litigation and policy practice that represents corporate employers in complex class action (employment discrimination and wage & hour) and EEOC litigation. Chambers USA America's Leading Lawyers for Business describes Shook, Hardy & Bacon (SHB) as: "A Powerhouse. Truly one of the best litigation firms in the nation." Innovation and collaboration are SHB hallmarks. As for the Shook Hardy national employment litigation and policy practice, Chambers USA writes: "Shook, Hardy & Bacon's broad litigation

group helps to add value to an already deep employment and labor team. The group handles complex single-plaintiff cases, and also excels in class actions in a variety of contexts. As well as providing top litigation services, the firm acts as national counsel to many large clients, dealing with federal compliance, background checks, privacy and Internet issues. A network of national offices supports the employment litigation team, and pleased clients say they have had 'absolutely excellent experiences.'"

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1. Employment Terms

1.1 Employee Status

Under federal and California law, all employees are either “exempt” or “non-exempt” from minimum wage and overtime requirements. “Exempt” employees (which include many white-collar professions) must meet the requirements of a qualified “exemption”. Such exemptions include employees serving in executive, administrative, professional, computer software, outside sales, and commissioned (inside) sales roles, as defined under the California Labor Code and Industrial Welfare Commission (IWC) Orders. There are other, less common exemptions available for certain industries or types of employees. To be considered “exempt”, an employee must spend over 50% of their time performing exempt tasks. In contrast, “non-exempt” employees (generally blue-collar workers) and all other employees who do not fall within a qualified exemption, are entitled to minimum wage and overtime requirements.

Generally, California wage and hour laws are more stringent than the federal overtime rules under the FLSA. California courts interpret the exceptions narrowly, and employers bear the burden of establishing that an exemption applies. (*Ramirez v Yosemite Water Co., Inc.*, 20 Cal. 4th 785, 794-95 (1999).) Failure to correctly categorise an employee risks exposure to litigation under the California Private Attorney Generals Act (PAGA).

While “independent contractors” are not “employees” covered by wage and hour law protections, employers must be careful not to misclassify individuals, as California mandates a very onerous test to show an individual is an independent contractor. (See *Dynamex Operations West, Inc. v Superior Court*, 4 Cal. 5th 903 (2018).) California courts also presume that an employer–employee relationship exists when an individual provides services for an employer. (*Ruiz v Affinity Logistics Corp.*, 667 F.3d 1318, 1323 (9th Cir. 2012).)

1.2 Employment Contracts

In California, the presumption is that an employee is employed “at will”, and any agreement for “permanent employment” will be construed as “at will” employment. However, such “at will” employment can be

limited by an employment contract. Employment contracts can be express or implied in fact. For example, under certain circumstances, employee handbooks can qualify as employment contracts. (See *Foley v Interactive Data Corp.*, 47 Cal. 3d 654, 677 (1988).) However, the court will consider any disclaimer language in the handbook in considering whether a valid contract was formed. (See *Guz v Bechtel Nat'l Inc.*, 24 Cal. 4th 317, 339-40 (2000).) In addition, employment contracts can be oral. (Foley, 47 Cal. 3d at 677.) There are no set terms that are required in employment contracts.

1.3 Working Hours

For non-exempt employees, California employers must satisfy the federal or state law overtime compensation requirements (whichever is more protective to employees). California is more protective to employees with regard to work hours and overtime. Under California law, employers must pay one and a half times an employee’s “regular rate” if the employee works more than 40 hours in a single workweek or more than eight hours in a single workday or the first eight hours worked on the seventh consecutive day of work in a workweek; and double the “regular rate” for work in excess of 12 hours in a single day or more than eight hours on the seventh consecutive day of a workweek. (California Labor Code, Section 510.)

However, employers may adopt alternative workweek schedules (AWS) that depart from the standard eight-hour workday, under certain conditions. California Labor Code, Section 511 allows AWS arrangements only if approved by at least two-thirds of affected employees in a secret ballot election. Further, such arrangement must be fully disclosed to affected employees. Under a duly-adopted alternative workweek schedule, the employer must pay overtime at one and a half times the regular rate after ten hours per day in a 40-hour workweek, and at double the regular rate after 12 hours per day and for any work more than eight hours on those days worked beyond the regularly scheduled workdays established by the alternative workweek agreement.

1.4 Compensation

For non-exempt employees, employers must comply with both federal and California law regarding

minimum wage requirements. Under California law, the minimum wage is currently USD16.50/hour for employers of all sizes (whereas the federal minimum wage is currently USD7.25/hour). Some cities, such as San Francisco, Berkeley, and Anaheim, impose a higher minimum wage on employers for each hour worked within each city. Some local wage ordinances are targeted to only certain employers or city contracts.

Further, any bonus promised to employees is included in determining the employee's "regular rate" of pay, including bonuses designed as incentives. Discretionary bonuses are not included.

1.5 Other Employment Terms

In California, wages include accrued vacation pay, and vacation is viewed as a form of deferred compensation. Employers are not required to provide vacation days to employees. However, if the employer does provide vacation days to its employees, when an employee has earned vacation time, it becomes a vested right of the employee, the employer cannot reclaim it, and the vacation time must be paid out to the employee upon the employee's separation. (California Labor Code, Section 227.3.)

The federal Family and Medical Leave Act (FMLA) provides job security to an employee who is absent from work either (i) because of the employee's own serious health condition; (ii) to care for specified family members with serious health conditions; (iii) for the birth of a child and to care for a newborn child; or (iv) because of the adoption or foster care of a child by the employee. (29 USC, Section 2601, et seq.) The FMLA provides covered employees with 12 workweeks of leave for specified reasons in a leave year. FMLA leave is unpaid unless a form of available paid time off is taken by the employee.

The California Family Rights Act (CFRA) covers more employers than the federal FMLA and provides broader protections. In addition, The California Pregnancy Disability Leave Law (PDLL) requires covered employers to provide four months of leave per pregnancy.

However, there are various types of paid leave available under California law. The California Paid Family

Leave (PFL) provides for up to eight weeks of payments from the State Disability Fund for wage loss of employees who take time off work to care for a seriously ill child, spouse, parent, grandparent, grandchild, sibling, or domestic partner, or to bond with a minor child within one year of the birth or placement of the child in connection with foster care or adoption. San Francisco requires non-governmental employers with 20+ employees, regardless of location, to supplement PFL benefits so that employees receive 100% of their wages, subject to a cap, for eight weeks of parental leave to bond with a new child ("San Francisco Paid Parental Leave"). Through this programme, employers pay an additional 30–40% of the employee's wages (in addition to the approximate 60–70% of wages provided for under California's PFL).

California also requires employers to provide paid sick time which may be used by the employee for his or her own illness or to care for specified others who are ill. The statutory accrual rate for paid sick leave is one hour for every 30 hours worked. Employees may use paid sick leave beginning on their 90th day of employment. Thereafter, they may use sick leave as it accrues. Employers may limit an employee's use of accrued paid sick leave to 40 hours or five days per year. Several cities also mandate additional paid sick leave requirements within their jurisdictions, including San Francisco, Oakland, Los Angeles, San Diego, and Long Beach.

Regarding confidentiality, under California law, everything that an employee acquires by virtue of his or her employment (other than compensation for services) belongs to the employer "whether acquired lawfully or unlawfully, or during or after the expiration of the term of his employment." (California Labor Code, Section 2860.) This protection clearly extends to trade secrets. A non-disclosure or confidentiality agreement between the employer and the employee may be helpful but is not required.

In a settlement agreement, the employee may seek a non-disparagement provision binding upon the employer's officers, managing agents and particular supervisors. If so, the employer may insist that this provision be mutual. However, exceptions to a non-disparagement provision must be made for truthful

testimony given in compliance with a subpoena or court order. Further, a non-disparagement provision must include, in substantial form, the following language: “Nothing in this agreement prevents you from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you have reason to believe is unlawful.”

2. Restrictive Covenants

2.1 Non-Competes

Generally, covenants not to compete in the employment context are void under California law, subject to limited exceptions. (California Business and Professions Code, Section 16600.) Moreover, including or requiring a non-compete clause in an employment contract, or requiring an employee to sign a non-compete agreement, constitutes “an act of unfair competition”. Lastly, employers are now required to notify certain employees that their non-compete clauses or agreements are void. Employers who try to enforce a non-compete clause are subject to civil liability. The employee, former employee, or prospective employee against whom the employer attempts to enforce the non-compete may bring a private action for injunctive relief, monetary damages, or both, and may recover attorney fees and costs. (California Business and Professions Code, Section 16600.5.) The parties cannot avoid this rule by designating another state’s law as governing their employment agreement.

2.2 Non-Solicits

Like with non-compete agreements, covenants not to solicit a former employer’s customers are generally void under California law. A former employee has the right to compete with his or her former employer, even for the business of those who had been customers of the former employer, provided such competition is fairly and legally conducted. Therefore, a covenant not to solicit the former employer’s customers is treated as a covenant not to compete and is invalid under the California Business and Professions Code, Section 16600.

3. Data Privacy

3.1 Data Privacy Law and Employment

The California Constitution explicitly recognises privacy as an inalienable right under Article I, Section 1. The California Supreme Court has construed the California Constitution to provide broader protection than the privacy rights guaranteed by the US Constitution. This right of privacy applies to private employers. There is also a common law right to privacy claim in California.

California statutes provide additional protections for employee privacy. For instance, the Confidentiality of Medical Information Act (CMIA) prohibits employers from disclosing employees’ medical information without authorisation, even when the employee’s medical condition is relevant to employment decisions, such as requests for paid leave or fitness-for-duty evaluations. Further, the California Consumer Privacy Act (CCPA) requires that a business that collects a consumer’s personal information must disclose to that consumer the categories of personal information being collected, and the purposes for which the information will be used. Further, many employers are implementing systems in the workplace, such as time-tracking systems, that use biometric data. The Civil Code, Section 1798.100 requires these businesses to take steps to protect unique, permanent biological identifiers, including imagery of the iris, retina, fingerprint, face, hand, palm, vein patterns, and voice recordings. Under the CCPA, consumers may bring a private claim against companies that fail to maintain reasonable security practices, resulting in a data breach. (Civil Code, Section 1798.100 et seq.)

In addition, various federal and state laws may limit an employer from monitoring its employees’ email and Internet use and from accessing their personal files on company computers, including the Federal Wiretap Act, Federal Stored Communications Act, and California Invasion of Privacy Act.

4. Foreign Workers

4.1 Limitations on Foreign Workers

The Immigration Reform and Control Act of 1985 (IRCA) prohibits US employers from hiring workers

who are unauthorised to work in the US. The IRCA also holds the employer responsible for confirming the employee's eligibility. (Public Law No 99-603, 100 Stat. 3359 (1986).) Under the IRCA, all employers must complete an Employment Eligibility Verification Form (Form I-9) for all current employees. Further, under the IRCA, employers must maintain those forms on file for either three years from the date of hire or one year after employment ends, whichever is longer.

Because employers may not directly ask about a candidate's national origin, citizenship, or immigration status during the recruitment process, they must use neutral questions to determine whether the candidate requires immigration sponsorship to begin working or to continue employment in the future. The Immigration and Employee Rights Section of the US' Civil Rights Division (IER) developed two questions that employers may ask candidates to determine if immigration sponsorship is needed:

- Are you legally authorised to work in the US?
- Do you now, or will you in the future, require immigration sponsorship for work authorisation (for example, H-1B status)?

Some foreign nationals may have an employment authorisation document (EA), including:

- individuals with a pending adjustment of status application, seeking to adjust their status from non-immigrant to green card;
- certain international entrepreneurs;
- individuals with Temporary Protected Status (TPS);
- individuals with Deferred Action for Childhood Arrivals (DACA);
- certain asylum applicants; and
- certain students, including students authorised for practical training in their field of study.

However, California enacted a law prohibiting local government E-Verify mandates for private employers. (Assembly Bill 1236, 2011–2012, Reg. Sess. (Ca. 2011).)

4.2 Registration Requirements for Foreign Workers

If an employer employs foreign workers, special procedures need to be followed. The employer may need to offer immigration sponsorship for the employee, including visas. For non-immigrants, common visas include H-1B (specialty occupation worker), L-1 (intra-company transfer), and TN Professionals. For immigrants, three steps are typical: the employee must have a permanent labour certification with the DOL, an immigrant visa petition filed with the USCIS, and the foreign national's permanent resident status must be granted. Common immigrant categories include EB-1, EB-2, EB-3, EB-4, and EB-5.

5. New Work

5.1 Mobile Work

California does not have restrictions for or against mobile work. But, California's various employment regulations still apply to remote workers. Regulations in the following categories often have novel or overlooked applications to remote employees:

- wage and hour law;
- safety regulations;
- employee reimbursement requirements; and
- privacy regulations.

California's Industrial Welfare Commission (IWC) wage orders apply broadly to employment within the state, including to remote employees. These wage orders require employers to pay employees for all hours worked and define "hours worked" as the time during which an employee is subject to the employer's control – including when an employee performs duties at home.

California employers are required to provide safe work environments, even to remote employees. This can include addressing ergonomic workstations through the use of certain chairs, desks, and computer equipment.

California Labor Code, Section 2802 requires employers to reimburse employees for necessary and reason-

able work-related expenses such as internet and cell phone usage incurred while working remotely.

California employers are responsible for protecting remote employees' personal data, which can be less secure for employees working remotely due to the use of home internet and personal devices.

5.2 Sabbaticals

California does not have any restrictions on sabbatical leave in the private sector. However, California does recognise a difference between sabbatical leave and vacation leave. Vested vacation leave is governed by California Labor Code, Section 227.3, which requires employers to pay out accrued and unused vacation time at the end of employment. This does not apply to sabbatical leave. Sabbatical leave is treated like an employee retention programme and is typically governed by the employer's policy alone.

5.3 Other New Manifestations

California is often on the forefront of regulations and statutory requirements for new work manifestations. Currently, the largest shift in working environments comes from the use of artificial intelligence. California regulates the use of AI in certain employment contexts, like hiring and firing. The California Civil Rights Department (CRD) has adopted a set of regulations that would require employers to show any AI hiring filters are free from discrimination in the categories protected by the Fair Employment Housing Act (FEHA) and to keep AI records for a period of time. The California legislature has also put forward SB 7, which would further regulate the use of AI in employment decisions.

6. Collective Relations

6.1 Unions

California has a strong union presence, with more than 3,000 labour unions. In 2024, union members accounted for 14.5% of wage and salary workers in California, as compared to the national rate of 9.9%. California also has the highest number of union members in any state (2.4 million). And in the public sector, unions represent more than 80% of California's 200,000+ state employees.

Union rights and regulations are governed at the federal level by the NLRA, which protects the rights of employees to form, join, and support a union.

California has state-level regulations on unions as well, set out in the California Labor Code. For example:

- **Collective Bargaining** – California Labor Code, Section 923 sets forth California's public policy to ensure employees have full freedom of association, self-organisation, and the ability to designate representatives of their choosing for collective bargaining.
- **Prohibition of Promises Against Public Policy** – California Labor Code, Section 921 prohibits promises between employees and employers that require joining, remaining, or refraining from joining labour organisations, as such promises contrary to public policy.
- **Jurisdictional Strikes** – California Labor Code, Section 1115 declares jurisdictional strikes unlawful and against public policy.
- **Employer-Dominated Unions** – California Labor Code, Section 1122 provides liability for employers that organise or control unions and employee groups, allowing injured parties to recover damages.

California also has a state agency, the Division of Labor Standards Enforcement (DLSE), which enforces California's labour laws, including labour laws related to unions.

In California's public sector, relations between public entities and their employers are governed by the Meyers-Milias-Brown Act (MMBA) (California Government Code, Section 3500 et seq).

6.2 Employee Representative Bodies

Unions typically serve as the representative bodies for employees in California. Employees' decision to form a union, their representatives, and the bargaining agreements between the union and the employer are governed by the NLRA and overseen by the NLRB.

6.3 Collective Bargaining Agreements

Once employees form a union, they may enter into a collective bargaining agreement (CBA) with the

employer. California state law specifically recognises a union's right to enter into a CBA as long as that agreement is not against public policy. The process of negotiating and formalising a CBA is governed by the NLRA.

7. Termination

7.1 Grounds for Termination

What constitutes grounds for termination in California varies depending on the type of employment held by the worker. Most California employees are at-will employees and may be terminated without cause for any non-discriminatory reason under California Labor Code, Section 2922. For employees subject to a CBA, the employer must comply with the bargaining agreement when terminating an employee, which may include notice periods, improvement plans, a tiered warning system, etc. And, for employees that have an employment agreement – whether written, oral, or implied – the employer may have to show “good cause” in order to terminate employment.

7.2 Notice Periods

California does not have mandatory notice provisions for terminating at-will employees. Employees who have employment agreements or are subject to CBAs may be entitled to notice before termination, which would be governed under their respective agreements.

For large-scale layoffs, California's Worker Adjustment and Retraining Notification (WARN) Act requires employers with 75 or more employees to provide 60 days' notice before conducting mass layoffs, plant closures, or relocations affecting 50 or more employees. This state law supplements the federal WARN Act by applying to smaller layoffs and employers than those covered by federal law. The California WARN Act applies even to temporary layoffs lasting less than six months, as interpreted by courts.

7.3 Dismissal for (Serious) Cause

California does not require cause for terminating at-will employees. If the employee has a contract or is subject to a collective bargaining agreement, termination for cause will be governed by the employee's

respective agreement.

7.4 Termination Agreements

Termination agreements, or severance agreements, are generally permitted under California law with a few caveats. Severance agreements cannot waive rights afforded by California's FEHA or certain federal rights (eg, rights set forth by the Age Discrimination in Employment Act).

Under California Government Code, Section 12964.5, employers are prohibited from including provisions that restrict employees from disclosing information about unlawful acts in the workplace, such as harassment or discrimination. If a severance agreement contains a non-disparagement or confidentiality clause, then it must include language substantially similar to: “Nothing in this agreement prevents you from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you have reason to believe is unlawful.”

Severance agreements must notify employees of their right to consult an attorney and provide a reasonable time period of at least five business days to review the agreement. Under federal law, if an employee is over 40, an employee must be provided at least 21 days to review and eight days to revoke, in order to waive age discrimination claims pursuant to the ADEA and Older Workers Benefit Protection Act (OWBPA). Employees may voluntarily waive these review periods and sign agreements earlier, but such a waiver must not be induced by fraud, misrepresentation, or threats.

7.5 Protected Categories of Employee

There is no category of employee that is protected from termination in California. However, California recognises a number of protected classes for employees under FEHA and the California Family Rights Act (CFRA). Employers may not terminate an employee based on protected characteristics. The common protected categories for employees in California are race, religion, colour, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, and sexual orientation.

8. Disputes

8.1 Wrongful Dismissal

California recognises a few avenues for an employee to bring a wrongful dismissal claim. First, a worker may sue for wrongful dismissal if the termination violates public policy. Some examples of terminations that are against public policy include dismissals for refusing to commit perjury, filing workers' compensation claims, protesting unsafe working conditions, or reporting criminal activity. More broadly, wrongful dismissal claims are available if the employee is terminated because he or she exercised statutory rights or refused to violate the law.

California also allows wrongful dismissal claims if the dismissal breaches an implied contract or the implied covenant of good faith and fair dealing. An employer can create an implied contract by making promises of job security, writing out written termination guidelines, or making assurances that an employee will not be terminated without good cause. Breaking one of these or similar promises can be grounds for a wrongful dismissal claim.

Technically, California also recognises wrongful termination claims based on discriminatory terminations that violate FEHA. However, FEHA has its own statutory system of recovery, which supplants the common law wrongful dismissal claim in practice.

8.2 Anti-Discrimination

California law protects all employees from employment discrimination and harassment on the basis of race, religious creed, colour, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, reproductive health decision-making, and veteran or military status. FEHA requires employers to provide reasonable accommodations to employees with physical or mental disabilities. Furthermore, FEHA protects employees from retaliation for asserting these rights.

FEHA applies to all employers with five or more employees. However, FEHA's anti-harassment protec-

tions apply to all employees, regardless of the size of their employer.

FEHA provides a range of remedies for employees who experience discrimination, including reinstatement, back pay, injunctive relief, and damages. The Department of Fair Employment and Housing (DFEH) is tasked with investigating complaints, conciliating disputes, and prosecuting violations. FEHA is intended to supplement, not replace, other remedies for employment discrimination, allowing employees to pursue common law claims alongside statutory claims.

8.3 Digitalisation

California does not have any blanket proscription against or requirement for the digitalisation of employment disputes. However, it is common for California courts and agencies to hold remote hearings at their discretion.

9. Dispute Resolution

9.1 Litigation

Different types of employment claims are subject to different litigation processes depending on the underlying claim.

Discrimination, Harassment, and Retaliation Claims

Under California law, employees who wish to bring a claim for employment discrimination, harassment, or retaliation must exhaust their administrative remedies before filing a lawsuit in state court. To exhaust their remedies, employees must first file a complaint with the California DFEH, which investigates the claim. Following an investigation, the DFEH attempts conciliation, an informal dispute resolution process between the employee and employer that avoids resorting to the courts. If that fails, the DFEH may go forward with an agency hearing.

An employee can also seek a Right-to-Sue letter from the DFEH, which allows the employee to proceed with litigation immediately. This letter satisfies the requirement that the employee exhaust his or her administrative remedies.

Labor Code Violation Claims

Under California law, employees who wish to bring a claim for violations of the Labor Code also must exhaust their administrative remedies before filing a lawsuit in state court. To exhaust their remedies, employees must first file with the Labor and Workforce Development Agency (LWDA), depending on the alleged violation. Some common divisions within the LWDA are the California Division of Labor Standards Enforcement (aka the Labor Commissioner's Office), Cal-OSHA, and the Division of Workers Compensation.

DLSE adjudicates wage claims on behalf of workers who file claims for non-payment of wages, overtime, or vacation pay, pursuant to California Labor Code, Sections 96 and 98. DLSE deputies hold informal conferences between employers and employees to resolve wage disputes. If a matter cannot be resolved at the informal conference, an administrative hearing is held to make a final determination on the matter.

Notably, employees who seek to bring claims under the Private Attorneys General Act (PAGA) must first exhaust their administrative remedies with the LWDA.

Collective Activity Claims

Claims related to activity protected by the NLRA or a collective bargaining agreement are subject to the requirements of the NLRA. An employee claiming to have been subject to an unfair labour practice must file a charge with the NLRB and go through their administrative process. Employees covered by a CBA typically must seek relief through their union or other arbitration procedures set out in the CBA.

9.2 Alternative Dispute Resolution

California will enforce arbitration provisions in employment contracts and in the employment context. However, there are a few restrictions. First, the arbitration agreement cannot be unconscionable (ie, excessively one-sided or procedurally unfair) or require the employee to waive his or her ability to file com-

plaints with the DFEH or EEOC. Second, California law requires the arbitration agreement to meet certain minimum standards to be enforceable. These standards are:

- neutral arbitrators;
- adequate discovery;
- written award;
- all types of relief offered by a court; and
- no additional costs beyond those required by a court.

Provided the arbitration agreement meets these minimum standards and is not unconscionable, California courts will typically enforce it.

It is important to note that California has grown increasingly skeptical of arbitration agreements in the employment context. The California Assembly passed AB 51, which sought to limit mandatory arbitration agreements for employees. On 1 January 2024, a federal court enjoined state officials from enforcing AB 51. But the legal environment in California continues to trend towards viewing arbitration agreements in the employment context as suspicious.

9.3 Costs

Generally, California follows the “American Rule”, which requires that each party bear its own costs in litigation. However, many statutes in the employment context provide for fee-shifting or the award of attorney's fees by the prevailing party. For example, PAGA cases allow for the award of attorney fees, if the employee prevails. Employees can also recover attorney fees in successful claims alleging discrimination, harassment, or retaliation under FEHA or federal counterparts (ADA, Title VII, etc).

California courts commonly use the “Lodestar” method to determine attorney fees for a prevailing party. The Lodestar is calculated by multiplying the reasonable number of hours spent on the case by a reasonable hourly rate.

USA – MASSACHUSETTS



Trends and Developments

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Shook, Hardy & Bacon LLP has a national employment litigation and policy practice that represents corporate employers in complex class action (employment discrimination and wage & hour) and EEOC litigation. Chambers USA America's Leading Lawyers for Business describes Shook, Hardy & Bacon (SHB) as: "A Powerhouse. Truly one of the best litigation firms in the nation." Innovation and collaboration are SHB hallmarks. As for the Shook Hardy national employment litigation and policy practice, Chambers USA writes: "Shook, Hardy & Bacon's broad litigation

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Developments in Massachusetts Employment Law

Massachusetts remains one of the most dynamic jurisdictions in the United States. The legal developments and the expansiveness of the protections, as interpreted by the courts, present great challenges for employers. The dynamism of Massachusetts looms large in the overall context of American law as it expands and becomes ever nuanced in the protections. This review of trends and developments provides a glimpse of some of the key trends with practical and sound guidance.

Massachusetts Commission Against Discrimination (MCAD)

In its most recent annual report, MCAD offered insight into current investigation trends and results. In 2024, the trend of increasing new complaints filed continued, after a slight decline during the COVID period in 2021. In 2022, 2,822 new complaints were filed; in 2023, there were 3,086 filed; and in 2024, a total of 3,553 complaints were filed. MCAD also maintains a considerable backlog of open cases (defined as investigations over 18 months old), but managed to slow the rate of backlog increases to just 2.8% from 2023–2024, after a massive increase of 27% from 2022–2023. The current backlog sits at 1,851 cases. Notably, MCAD reported that of its total 1,276 investigative findings in 2024, 84% found a lack of probable cause to support the complainant's allegations and 16% resulted in a probable cause finding.

Noteworthy recent decisions by MCAD include large awards of attorneys' fees and costs for complainants recovering for discrimination claims before the

Hearing Commissioner. These include an award of USD157,327 to the complainant in a successful finding of failure to make reasonable accommodations, retaliation, and constructive discharge against the Massachusetts Department of Children and Families, *MCAD and Joseph v Massachusetts Department of Children and Families*, 46 MDLR 18 (2024) an award of USD231,996.38 in attorneys' fees for the successful claim of racial discrimination and retaliation by an African-American woman against her employer, *MCAD and Thomas v Stash's Pizza* (2024) and USD53,498.90 awarded in attorneys' fees to the complainant for successful claims of hostile work environment, sexual harassment and retaliation, *MCAD and Vincenti v the Plymouth Exchange et al* (2024).

[The 2024 MCAD Annual Report is available here.](#)

Wage and hour litigation

First Circuit finds judicial delay not a basis for equitable tolling in FLSA collective action

The First Circuit Court of Appeals decided in *Kwoka v Enterprise Rent-A-Car*, 141 F.4th 10 (1st Cir. 2025), that the district court's delay issuing a decision could not form the basis for a claim of equitable tolling of the statute of limitations for an action brought pursuant to the Fair Labor Standards Act (FLSA). Assuming without deciding that a delay could be a basis to equitably toll the statute of limitations, the First Circuit panel concluded that no such tolling was warranted in this case. Accordingly, the decision affirmed the dismissal of untimely FLSA claims asserted by opt-ins that had joined the action after the complaint had been filed.

The plaintiff, Mamadou Bah, an assistant branch manager for Enterprise Rent-A-Car, filed an action challenging his “exempt” classification from overtime wage requirements of the FLSA and Massachusetts law. He filed the action in December 2017, alleging that the defendant joint employers had failed to pay him and other assistant branch managers overtime wages prior to 27 November 2016. On the date the complaint was filed, Bah also filed a Motion to Issue Notice Pursuant to Section 216 (b) of the FLSA, which sought conditional certification of a collective of similarly situated assistant branch managers in the three years prior to November 2016. In response, the defendants moved to stay briefing on the motion due to a pending motion to dismiss, which the District Court granted. Later that year, the Court dismissed all claims against one of the defendants and, in response, Bah filed an amended complaint on 15 October 2018. Further motion practice continued in response to the amended complaint, which led to Bah filing a second amended complaint. More briefing – a motion to dismiss the second amended complaint that was denied and a motion for reconsideration that was also denied – meant that the original stay order was not addressed until 5 November 2021. By this time, almost four years had elapsed since the filing of the original complaint, with the statute of limitations for claims under Section 216 (b) continuing to run for assistant branch managers other than the named plaintiff, Bah.

The parties were then instructed by the Court to brief the proposed conditional certification of nationwide assistant managers. Defendants opposed certification of a nationwide collective, and further, sought an additional stay due to a pending ruling on a related question about personal jurisdiction under consideration by the First Circuit in *Waters v Day & Zimmerman NPS, Inc.*, 23 F.4th 84, 89 (1st Cir. 2022). Over Bah’s objection, a stay was ordered. The *Waters* decision issued on 13 January 2022 resolved the District Court’s concern regarding personal jurisdiction and a class was conditionally certified by order dated 28 June 2022. At that time, the District Court recognised that the statute of limitations had expired for all potential opt-ins to Bah’s lawsuit. Nonetheless, the Court ordered issuance of the FLSA notice on the basis that opt-in plaintiffs “would not be barred from joining the collec-

tive if he or she prove[d] that equitable tolling of the statute of limitations applie[d].”

Over 1,400 individuals filed opt-in forms in response to the notice, with a large percentage also signing template declarations to explain why they had not pursued their claims earlier. Under Supreme Court precedent, the opt-in plaintiffs were required to demonstrate that they had been “diligently” pursuing their rights and that “some extraordinary circumstance” prevented timely filing of claims. (See *Menominee Indian Tribe of Wisconsin v United States*, 577 U.S. 250, 255, 136 S.Ct. 750 (2016).) The District Court concluded that Bah had failed to demonstrate that the opt-ins had diligently pursued their claims and declined to categorically grant tolling to all of the opt-ins, as that approach would “make equitable tolling common and disrupt the balance struck by Congress in enacting the FLSA.” The Court also rejected the argument that judicial delay was an “extraordinary circumstance” that supported tolling, because the delays were attributable to the “normal course of deliberation and decision.” The Court also noted that Bah had never filed a motion to toll the statute of limitations before it had expired. The Court then decertified the collective and entered a partial final judgment. An interlocutory appeal followed.

Plaintiff-appellants argued that it was abuse of discretion to not order tolling on a categorical basis, as opposed to making individualised showings why each person was unable to timely opt in to the lawsuit. They claimed categorical tolling was warranted based on unique circumstances; namely, the “significant delay” in the court’s ruling on the motion to issue notice to the putative class, in conjunction with the non-obvious nature of the alleged FLSA violations and the defendants’ alleged concealment of those violations. The First Circuit readily dismissed appellants’ arguments as to concealment and non-obviousness of the violations and focused its attention on the effects of “significant delay”. The First Circuit highlighted that the cases that plaintiffs rely upon for tolling as the result of significant delays do not suggest that the delay itself, no matter the reason for it, warrants tolling. Moreover, the First Circuit found that in this case, the issuance of the notice after the expiration of the limitations period was attributable to the plaintiff’s own defects

in pleading facts necessary to state a claim on behalf of potential opt-ins. The only complaint that properly pleaded facts in support of such claims was filed on 16 March 2020 – after the statute of limitations had already lapsed for potential opt-ins.

The First Circuit also noted that while Bah had raised equitable tolling in its opposition to the defendants' original motion to dismiss, Bah had never again raised the issue of tolling after that first motion to dismiss was decided. The panel suggested that Bah should have raised the motion again to address further case delays caused by subsequent motion practice related to the amended complaints. Accordingly, the panel declined to second guess the decision-making of the district court to find that the delay was not a "delay beyond the movant's control", and arising from plaintiff's own actions and inactions and not in any way "inherent" in the FLSA certification process.

District Court resolves ambiguity in Massachusetts Wage Act and finds employee stated viable claim for one-day delayed payments

In a case of first impression, the District of Massachusetts in *Turgut v Hitachi Rail STS USA, Inc.*, 768 F.Supp.3d 200 (27 February 2025), examined if an employee had stated a viable claim under the Massachusetts Wage Act by alleging that his employer paid its engineering managers on the seventh – and not the sixth – day following the close of the payroll period. That is what the plaintiff Volkan Turgut (Turgut) contended in a putative class action against his employer, Hitachi Rail STS USA (Hitachi). The Court openly acknowledged that, to some, a one-day difference in payment dates may be seen as harmless. But after an in-depth analysis of statutory construction, the Court determined that the answer was "yes" – one day delays in payment could be the basis of a viable Wage Act claim, but that the claim depended on the specific work schedule of the employee in consideration of the employee's status as either salaried or hourly worker.

Turgut, a senior engineer manager with Hitachi, alleged that he works five days a week and is paid on a 14-day payroll period. He further claimed that Hitachi does not pay him within six days of the close of any payroll period, and has not done so since at

least February 2021. In his complaint, Turgut alleged that most Hitachi employees in Massachusetts work either five or six days per week. Turgut purported to represent a class of Hitachi employees who did not receive their wages within six days of the close of the payroll period. Hitachi moved to dismiss the Wage Act claims.

The Massachusetts Wage Act sets forth different deadlines for payment to employees depending upon how many days per week an employee works. A six-day deadline for payment applies to employees that work five or six days in a week; a seven-day deadline applies to employees that work less than five days per week, but also those employees that work seven days per week. Hitachi argued in its motion to dismiss that because the statute used the word "employed", a salaried employee should be considered to be "employed" for seven days per week, notwithstanding how many days per week they actually work (allowing Hitachi to pay them on the seventh day after the close of the pay period). However, a 1960 amendment to the Wage Act that mandated that salaried employees should not go unpaid for more than six days presented a barrier to that interpretation. Finding the plain text of the statute and amendment to be ambiguous, the Court engaged in an analysis of legislative history and canons of statutory construction.

After an analysis of relevant legislative and attorney general guidance materials, the Court ruled that in order to give full effect to the language of the 1960 amendment, it could not accept Hitachi's argument that salaried employees were "employed" for seven days per week and subject to a seven-day payment deadline. Accordingly, the Court determined that for all salaried employees, the Wage Act requires that they be paid within six days. For hourly employees that work seven calendar days of a week, and those that work less than five calendar days in a week, the seven day deadline for payment similarly applies. Only hourly employees that work five or six calendar days per week must be paid within six days.

Because the plaintiff worked only five days per week, the six day deadline for payment applied. Accordingly, the Court denied Hitachi's motion to dismiss. In its conclusion, the Court noted that it was not entitled

to second guess the legislature's decision to vary payment deadlines, and further emphasised that for certain Massachusetts workers living paycheck to paycheck, a single day's payment delay could be important.

Recent verdicts and reported wage and hour settlements

Su v Gate Solution Sys. Inc. et al, 2024 WL 5359544 (Massachusetts District Court, 21 November 2024) – USD2,424,576 (settlement)

The US Department of Labor alleged that defendants Healthcare Services Group Inc., Gate Solution Systems Inc. (GSS), and GSS' owners/managers failed to pay employees premium overtime compensation and failed to keep accurate employment-related records in violation of the Fair Labor Standards Act.

Macedo v Hatch, 2024 WL 4784541 (Massachusetts Superior Court, 28 August 2024) – bench verdict for defendant

Plaintiff Douglas Macedo alleged that he was employed by a landscaping company owned by the defendant, and that he was terminated following his request to be paid overtime wages to which he was entitled. He asserted claims for retaliation under the Massachusetts Wage Act. The defendants denied the allegations and alleged the plaintiff was discharged for poor job performance. The defendants claimed that they had made a good-faith payment to, and later entered into a severance agreement with, the plaintiff. The defendants claimed they fully performed its obligations under the severance agreement, but the plaintiff breached the agreement by engaging in activities that he promised to refrain from.

Sutton v Jordan's Furniture, Inc., 493 Massachusetts 728 (2024) – USD11.6 million (jury verdict)

The Supreme Judicial Court of Massachusetts affirmed judgment in favour of plaintiffs, a class of commission-based sales associates, against furniture retailer Jordan's Furniture, concerning failure to pay time-and-a-half wages for working overtime and on Sundays. Following the appeal, the trial court entered final judgment for USD11.6 million, plus USD500,000 in attorneys' fees and costs. The judgment was equal to the amounts owed to all Jordan's sales associates

between 19 June 2016, and 1 August 2019, plus treble damages and pre- and post-judgment interest.

Walsh v Liam's Home Furniture Inc. et al, 2023 WL 11967952 (Massachusetts District Court, 1 December 2023) – USD15,000 (settlement)

The US Department of Labor brought action on behalf of delivery driver Scott Reddin against defendant-employers Liam's Home Furniture Inc., Collins Movers Inc., and Francise Frederick, the manager of Liam's and Collins. When Reddin stated that he intended to report the defendants to the Department of Labor for non-payment of wages, Frederick allegedly assaulted him in response. The plaintiff alleged the defendants failed to pay Reddin minimum wage for all hours worked, failed to keep complete and accurate records, and unlawfully retaliated against Reddin in violation of the FLSA. The defendants denied the allegations and claimed Reddin was not an employee and had unclean hands. The defendants also denied that Frederick assaulted Reddin, contending Frederick acted in self-defence.

Walsh v Fakhouri Inc. et al, 2023 WL 11976549 (Massachusetts District Court, 14 September 2023) – USD338,628 (settlement)

US Department of Labor action against defendant Fakhouri Inc. d/b/a Sound Bites Cafe, a restaurant, and defendant Yasser Mirza, who managed the restaurant's operations and employees, where the plaintiff alleged FLSA violations including retention of employee tips, failure to pay the federal minimum wage for all hours worked for two employees, failure to pay at least 14 employees overtime at the proper rate, and failure to maintain employment-related records.

Massachusetts statutes and regulations

Massachusetts Pay Transparency Law takes effect on 29 October 2025 and requires covered employers to provide pay range information

Effective 29 October 2025, the pay transparency provisions of the Equal Pay Act of 2018, G.L. c. 149, Section 105F, will take effect. Employers with 25 or more employees in Massachusetts ("Covered Employers") will be required to disclose the pay range for all job postings. Under the law, the pay range is the annual salary or hourly range that the employer "reasonably and in good faith" expects to pay for the position.

The law also makes pay ranges available to current employees that are offered promotions or position transfers and who request pay information. Covered Employers are prohibited from engaging in retaliation against an employee seeking to enforce their rights or file a complaint related to an alleged violation of the statute. The statute provides the attorney general with exclusive jurisdiction to enforce subsections (b)–(d), which concern the requirements for Covered Employers to provide the pay range information.

Independent contractor/misclassification

Supreme Judicial Court holds that 7-Eleven franchisees are not employees of 7-Eleven in misclassification action

In *Patel v 7-Eleven, Inc. (Patel II)*, 494 Massachusetts 562 (2024), the Supreme Judicial Court (SJC) resolved a long-running case in which 7-Eleven franchisees claimed that they were misclassified as independent contractors and should instead be considered employees of the franchisor. Responding to the a certified question from the United States Court of Appeals for the First Circuit, the SJC held that the plaintiffs had failed to meet their threshold burden under the Massachusetts Independent Contractor Law (ICL), G.L. c. 149, Section 148B, that they were performing services for the defendant, 7-Eleven and determined that the franchisee-plaintiffs were operating their own independent business.

In *Patel I*, the SJC identified that the threshold question under the ICL for independent contractor classification was whether any employee claiming to be misclassified actually performs any service for the franchisor. (*Patel v 7-Eleven, Inc. (Patel I)*, 489 Massachusetts 356, 370 (2022).) For this threshold question, the plaintiff-franchisee bears the burden of proof. If met, the burden then shifts to the franchisor defendant to meet all three prongs of the “ABC” test under the ICL: “(1) the individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact”; “(2) the service is performed outside the usual course of the business of the employer”; and “(3) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.” (Id., at 361.) As the Court in *Patel*

I noted, nothing prohibits the existence of legitimate franchise relationships not created to evade obligations under the wage statutes. Based on the ruling in *Patel I*, the trial court entered summary judgment for defendant, 7-Eleven.

On appeal, the First Circuit certified a second question to the SJC. Namely, do the plaintiff franchisees perform services for the franchisor within the meaning of the ICL when they perform contractual obligations under the franchise agreement, and to which the franchisor receives a percentage of gross profits? The SJC concluded “no”. The decision confirms that when there is a “true” franchise relationship, plaintiffs are unable to overcome the threshold question under the ICL established in *Patel I*. Operating a franchised business pursuant to a franchise agreement is insufficient to satisfy the franchisee’s threshold burden. The franchisees, rather than operating the stores under their own goodwill, choose to operate those stores with the benefits of the franchisor’s brand and promise to use the brand licence with standards designed to maintain the quality of the brand. The SJC also stated that the fact that the franchisor benefits from the sale of products or services by the franchisee through a percentage-based royalty payment still does not mean that the franchisees were “providing services” to 7-Eleven under the ICL.

Retaliation/whistle-blowers

Appeals Court rules that EMT is a “health care provider” allowed to plead a claim under Medical Whistleblower Statute after termination

The Massachusetts Appeals Court ruled in *Luu v Fallon Service, Inc.*, 105 Appeals Court of Massachusetts, 236 (2025), that an EMT that alleged that he had been terminated for taking a photograph to report medical misconduct to the Office of Emergency Medical Services had properly pleaded a claim under the Medical Whistleblower Statute, G.L. c. 149, 187 (b). Reversing the trial court’s order to dismiss, the Appeals Court concluded that the Statute prohibits retaliation by an ambulance service against an EMT employed by it for reporting medical misconduct to the government.

As per the facts of the complaint, Nial Luu (Luu) was an EMT employed by Fallon Service, Inc. (Fallon) that reported to a call at Encompass Health Rehabilita-

tion Hospital to transport a patient experiencing an altered mental status to a hospital. Luu alleged that he was the driver of the ambulance and observed his partner EMT on his cell phone and neglecting the care of the patient during the transportation. Upon arrival to the hospital, Luu identified a new hemorrhage injury on the patient's arm that he believed to be the result of his partner EMT's conduct. Luu collected cell phone photographs and video of the arm injury. He initially reported the incident to his field supervisor, but in the 30 days following his report Luu claimed he experienced a change in job duties and received no response to his report. Luu alleged he was later instructed to delete the photographs and video in his possession by his company officer; instead, he filed a report with OEMS. Luu was terminated for failing to delete the photos in violation of company policy.

Luu filed a lawsuit in the Superior Court alleging a whistle-blower violation, wrongful termination in violation of public policy, and negligent infliction of emotional distress. In his pleading, Luu referenced G.L. c. 149, 185 (b) (3), a provision which only applies to governmental entities. In response to the defendants' motion for judgment on the pleadings, the Court issued an order dismissing Luu's claims. In a motion for relief from judgment, Luu cited G.L. c. 149, 187, a statute that prohibits retaliation against whistle-blowers in a medical context, suggesting that his complaint could be amended to re-label the whistle-blower count. The judge denied the motion and an appeal followed.

On appeal, the parties disagreed if Luu, as an EMT, met the statutory definition of "health care provider" entitled to whistle-blower protections. The Appeals Court determined that Luu fell squarely within the definition that included in its scope "any other health care provider who performs or has performed health care related services for and under the control of a health care facility for care-related services." The Appeals Court distinguished *Perez v Bay State Ambulance & Hosp. Rental Serv., Inc.*, a ruling by the Supreme Judicial Court that the Medical Malpractice Tribunal Statute, G.L. c. 231, 60B, excluded EMTs because it did not specifically enumerate EMTs within its list of "providers of health care". The Appeals Court noted that the two statutes had different purposes: one to enact medical tribunals to guarantee the continued availability of medical malpractice insurance and the other to safeguard patient care by protecting the rights of healthcare providers who expose deficiencies in care. The more expansive language used in the provisions of the Whistleblower Statute make sense in light of that Statute's purpose. Accordingly, the Appeals Court reversed the dismissal of whistle-blower claim, notwithstanding Luu's error in initially pleading the wrong statute. The Appeals Court did, however, affirm dismissal of Luu's wrongful termination and emotional distress claims.

USA – NEBRASKA



Law and Practice

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Rembolt Ludtke LLP is based in Nebraska, its employment and labour law team providing a comprehensive range of services including advice and counsel, training, and litigation of claims before administrative agencies and state and federal courts. The employment team assists clients with a proactive approach to workplace matters by providing proper planning, management training, development of effective policies and practices, and audits that expose potential issues and shape appropriate responses.

The team's "First Friday Webinar" series has received regional recognition and is just one tool employed to keep clients abreast of the changing legal landscape. When necessary, litigation is vigorously pursued and defended, including lawsuits involving non-competes and non-solicitation agreements. The labour team advises employers on organising drives, defends unfair labour practice charges and represents employers in arbitrations and collective bargaining.

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1. Employment Terms

1.1 Employee Status

At-Will Employment

Nebraska is an “at will” employment state, meaning either the employer or the employee can terminate the relationship at any time provided the termination decision is not otherwise prohibited by law (ie, due to discrimination or retaliation). Although Nebraska is an employment-at-will jurisdiction, an employer can forfeit its at-will right to terminate an employee by promising employment for a fixed period or stating (including verbally) that employment will only be terminated under certain circumstances, such as for “good cause” or “good reason”.

Joint Employment

Joint employment occurs when more than one entity is a worker’s employer. Joint employers are individually and equally responsible for compliance with labour, employment and certain other laws.

For a third party to be a joint employer with another employer, the third party must have exerted significant control over the employee. Factors to consider in determining joint-employer status are:

- the right of selection, or to employ at will;
- responsibility for the payment of wages;
- the right to discharge or terminate the relationship;
- the right to control the work; and
- whether the party sought to held as the employer is the responsible authority in charge of the work or for whose benefit the work is performed.

Under the National Labor Relations Act (NLRA), the National Labor Relations Board (NLRB) currently may find two or more entities are joint employers if they are both employers within the meaning of the common law and if they share or co-determine matters governing the essential terms and conditions of employment.

Non-Exempt and Exempt Employees

Nebraska follows the federal Fair Labor Standards Act (FLSA). Non-exempt employees are those employees who do not meet the FLSA white-collar exemptions and are entitled to minimum wage and overtime for hours worked over 40 in a workweek. Exempt employ-

ees are those employees who meet one of the FLSA white-collar exemptions including executive, administration, professional, or certain computer or outside sales employees. Each exemption has specific duties requirements in order for the employee to qualify. Employees who satisfy the requirements of one of the FLSA’s white-collar exemptions are not entitled to minimum wage or overtime.

Employers who violate the FLSA are liable for economic damages in the form of unpaid overtime wages. Employees who prove a violation of the FLSA’s overtime requirements may be entitled to “double damages” that match the amount of unpaid overtime wages unless the employer is able to show it acted in good faith. Employees who prove an FLSA overtime violation was “willful” may extended the standard two-year statute of limitation period to three years and recover attorney fees.

1.2 Employment Contracts

Employment contracts are not required in Nebraska. Nebraska is an at-will employment state. At-will employment is presumed to be for an indefinite term and an employer or employee can terminate the employment relationship at any time for any lawful reason.

Employers often utilise individual agreements to address confidentiality and trade secrets, and non-compete and non-solicitation covenants. See 2. **Restrictive Covenants**.

In the absence of a written employment agreement, Nebraska employers typically define the employment relationship in documents such as offer letters, job descriptions, employment policies or employee handbooks. Employers should be mindful to include disclaimers in such documents where appropriate to avoid unintended obligations.

1.3 Working Hours

Maximum Working Hours

Nebraska does not limit the maximum working hours per day/week for workers aged 16 and older. Minors under 14 years generally may not work more than eight hours per day, more than 48 hours per week, or before 6am or after 8pm. Minors 14 and 15 years old generally may not work more than eight hours per day,

more than 48 hours per week, or before 6am or after 10pm. Some exceptions to these limitations apply to minors working in detasselling.

Flexible Working Arrangements

Flexible working arrangements are subject to the requirements of the FLSA. Nebraska has not adopted any specific guidance to these types of arrangements. Employers who adopt such arrangements should continue to be mindful of legal obligations to workers including obligations regarding workers' compensation and wage and hour matters.

Similarly, Nebraska law does not dictate specific requirements or an hour threshold for part-time employees. To the extent an employee meets the minimum threshold hours under the Affordable Care Act (regardless of the employee's full- or part-time classification), the employer may be obligated to provide health insurance benefits. Likewise, effective 1 October 2025, employers will be required to provide part-time employees paid sick leave for their own illness, to care for a family member, or for any other qualifying reason. See **1.5 Other Employment Terms**.

Overtime Requirements

Nebraska does not have any laws related to overtime requirements for private employers. Nebraska follows the FLSA's overtime requirement, which requires most employers to pay overtime for each hour worked in excess of 40 hours per workweek at the rate of 1.5 times the employee's regular pay rate.

1.4 Compensation

Nebraska Minimum Wage

Nebraska minimum wage is USD13.50/hr until 31 December 2025. This rate will increase to USD15.00/hr for the period between 1 January 2026 and 31 December 2026. It is expected that the established minimum wage shall be increased on 1 January 2027, and on January 1st of successive years, according to the increase in the cost of living.

Tipped Employees

Tipped employees must be paid at least USD2.13/hr. The sum of tipped employees' hourly wage plus tips must equal or exceed the Nebraska minimum wage.

Training Wage

Nebraska employers may pay a new employee who is younger than 20 years and is not a seasonal or migrant worker a training wage of at least 75% of the federal minimum wage for 90 days from the date the new employee was hired.

Bonus Requirements

Nebraska does not dictate specific terms regarding bonus compensation. In Nebraska, bonuses are generally treated as wages and are subject to the same withholding and reporting requirements as regular wages. This includes federal and state income tax withholding, as well as Social Security, Medicare and FUTA taxes.

1.5 Other Employment Terms

Vacation Pay

Nebraska law does not require employers to provide vacation or vacation pay. If an employer provides vacation pay, the employer must pay out all accrued but unused vacation pay at termination.

Paid Sick Leave

Effective 1 October 2025, Nebraska law requires private employers with 11 or more employees to provide paid sick leave. Paid sick time generally may be used for an employee's health condition, care of a family member's health condition, closure of the employee's place of business due to a public health emergency, and for the care of a child whose school or place of care is closed due to a public health emergency.

All employees, including part-time and temporary, who work 80 hours of consecutive employment in a calendar year in Nebraska for a covered employer are entitled to accrue paid sick time unless exempted. The following employees are exempt from the Nebraska paid sick time requirements:

- individual owner-operators;
- independent contractors;
- individuals who work fewer than 80 hours in a calendar year;
- individuals who are employed in agricultural employment of a seasonal or other temporary nature;

- employees who are subject to the federal Railroad Unemployment Insurance Act; and
- individuals under 16 years of age.

Small employers (11–19 employees) must provide eligible employees up to 40 hours of paid sick leave per year. Large employers (20 or more employees) must provide up to 56 hours of paid sick leave per year. Employers with other paid leave policies that meet the minimum paid leave requirements are not required to provide additional sick time.

Jury Duty Leave

Nebraska law mandates that employees shall not be subject to discharge from employment, loss of pay, loss of sick leave, loss of vacation time or any other form of penalty as a result of their absence from employment due to jury duty upon giving reasonable notice to their employer of such summons. Although employees may not be subject to a loss of pay, employers may reduce the employee's wages by the amount of compensation received as a result of jury duty.

Adoptive Parent Leave

Nebraska law requires that all Nebraska private and government employers who permit employees to take a leave of absence following the birth of a child must provide the same leave upon the same terms to adoptive parents. The adoptive parent leave of absence is not required if the child being adopted is a special needs child over 18 years of age, a child who is over eight years of age and is not a special needs child, a stepchild being adopted by their stepparent, a foster child being adopted by their foster parent, or a child who was originally under a voluntary placement for purposes other than adoption without assistance from an attorney, physician or other individual or agency which later results in a petition for the adoption of the child by the person with whom the voluntary placement was made. An aggrieved adoptive parent may bring a private action against their employer. The law entitles the successful adoptive parent to equitable relief, damages and attorney fees.

Military Leave of Absence

Nebraska law requires state and public employers in Nebraska to provide leave without loss of pay to employees who are members of:

- the National Guard;
- the Army Reserve;
- the Naval Reserve;
- the Marine Corps Reserve;
- the Air Force Reserve; or
- the Coast Guard Reserve.

Employees are also eligible if they are in “uniformed services” including the Armed Forces, and on active duty or engaged in certain other military duties. Aggrieved employees may be entitled to equitable relief and damages.

Family Military Leave Act: Neb. Rev. St. §§ 55-501 to 55-507

Nebraska employers with at least 15 employees must provide unpaid family military leave to certain eligible employees who are the spouse or parent of a person called to military service under federal or state deployment orders lasting 179 days or longer. Aggrieved employees may be entitled to equitable relief.

Volunteer Emergency Responders Job Protection Act

Nebraska employers with ten or more employees must provide certain emergency responders unpaid, job-protected leave in connection with volunteer emergency responder services. Employees are eligible for this leave if a governing body in Nebraska has approved them to serve in:

- a volunteer fire department;
- a volunteer first aid, rescue, ambulance or emergency squad;
- a volunteer fire company, association or organization providing fire protection or emergency response services to protect life, health or property for any city, village, rural or suburban fire protection district;
- the Nebraska wing of the Civil Air Patrol; or
- a state emergency response team under the Emergency Management Act.

An employee does not include professional firefighters or law enforcement officers acting as volunteer emergency responders.

An aggrieved employee may file a private suit against an employer. If successful, the law entitles the employee to:

- reinstatement without reduction in wages, seniority or other benefits;
- lost wages or other benefits;
- court costs; and
- reasonable attorneys' fees.

Voting Leave and Election Worker Leave

All employers must provide voting leave if necessary. Nebraska employees are eligible for Election Worker Leave if they are appointed to serve as:

- a judge or clerk of election;
- a precinct or district inspector;
- a canvassing board member; or
- any other election worker.

Confidentiality and Non-Disparagement

To be enforceable in Nebraska, confidentiality agreements must protect legitimate business interests, such as the need to protect trade secrets, proprietary information or other confidential information. Confidentiality agreements must be limited to the period of time the information is useful or becomes public through no fault of the employee. Nebraska employers should be mindful to not draft confidentiality provisions so broad as to interfere with employee conduct protected by the National Labor Relations Act (NLRA) including protected communication regarding terms and conditions of employment.

Nebraska does not have any general law addressing non-disparagement requirements. Private employers in Nebraska should follow the National Labor Relations Board (NLRB) precedent, which has held that broadly worded non-disparagement provisions may be unlawful to the extent such provisions interfere with protected employee conduct under the NLRA. Accordingly, non-disparagement provisions should be tailored to prohibit only those statements about the employer that are false or made with reckless disregard for the truth or falsity of the statement.

Employee Liability

Generally, Nebraska employees may be liable for their actions. Nebraska follows the doctrine of respondeat superior, which holds that an employer may be vicariously liable for an employee's acts committed within the scope of employment or liable for the negligent hiring, supervision or retention of an employee.

2. Restrictive Covenants

2.1 Non-Competes

Nebraska has no law generally governing non-competes in employment. Under Nebraska common law, a non-compete is enforceable in Nebraska if it is reasonable. A non-compete is reasonable if the restriction:

- does not harm the public interest;
- is no greater than reasonably necessary to protect the employer in a legitimate business interest; and
- is not unduly harsh and oppressive to the employee.

In the context of the sale of a business, a non-compete is enforceable only if it is no greater than necessary to protect the buyer's interest in the business's goodwill and the restrictions are reasonable in character, space and time.

Reasonable Restrictions

A non-compete in Nebraska must contain time restrictions and geographic restrictions no greater than necessary to protect the employer's legitimate business interests. Nebraska courts may consider the following factors when determining whether a time restriction and geographic restriction is reasonable:

- the difference in bargaining power between the employer and employee;
- the employer's risk of losing customers;
- each party's participation in establishing customers;
- the employer's good faith;
- the employee's training, education and family needs;
- the current economic conditions;

- if the employee must relocate or change industries; and
- for non-competes regarding the use of confidential information, courts will evaluate the duration the information is useful.

In cases involving customer contact, a geographic restriction must be limited to the area the employee worked or solicited clients for the employer.

Enforcement

In Nebraska, the party seeking to enforce the non-compete bears the burden of proof. Nebraska courts will not modify a non-compete agreement that is unreasonable. Nebraska law provides an exception for franchise agreements. Nebraska courts may reform a non-compete restriction in a franchise agreement to the extent necessary to cause the non-compete restriction to be reasonable and enforceable.

Employers injured because an employee violated a non-compete may recover all damages that are both reasonably certain and foreseeable. Damages are measured by the loss to the employer, not the gain to the employee. The employer must provide sufficient evidence to estimate actual damages. If the employer fails to do so, then the employer may only win nominal damages if the employer is unable to provide evidence of a specific monetary loss.

Consideration

In Nebraska, sufficient consideration for a non-compete restriction is any consideration that provides a benefit or detriment to a party. This includes an employer's promise to pay severance compensation to a terminated employee.

Industry-Specific Limitations

In Nebraska, a lawyer may not participate in an agreement that restricts the right of the lawyer to practise after termination of a relationship, except an agreement concerning benefits upon retirement. Lawyers may not participate in an agreement that restricts the lawyer's right to practise as part of a settlement of a client controversy.

2.2 Non-Solicits

Nebraska has no law generally governing employee and customer non-solicitation clauses in employment. In Nebraska, employee and customer non-solicitation agreements must also be reasonable in scope and necessary to protect the employer's legitimate business interests. See **2.1 Non-Competes**.

Nebraska courts regard a non-compete with customer lists or other restrictions as reasonable only if it restricts the former employee from working for or soliciting the former employer's clients or accounts with whom the employee actually did business and had personal contact during employment. Similarly, Nebraska employers should limit employee non-solicitation agreements to only those employees with whom the employee had material contact during employment.

Employers may not restrict employees from contacting former clients as of the employee's termination date. Nebraska courts have held that a general advertisement made to customers with whom a former employee did business and had personal contact may constitute a solicitation and breach of a non-compete agreement, even if the customer was not directly solicited by the former employee.

3. Data Privacy

3.1 Data Privacy Law and Employment

Nebraska has adopted a variety of statutory protections regarding data privacy law and employment.

Workplace Privacy Act

Nebraska law prohibits an employer from requiring an employee or applicant to:

- provide or disclose a username, password, or other account information to gain access to the employee's or applicant's personal internet account;
- log into a personal internet account in the employer's presence so that the employer can observe the contents of or gain access to the employee's or applicant's personal internet account;

- add anyone, including the employer, to the list of contacts associated with the employee's or applicant's personal internet account;
- change the settings on the employee's or applicant's personal internet account which affect the ability of others to view the content of that account; or
- waive or limit any protection granted under the Workplace Privacy Act as a condition of employment.

Further, an employer must not do the following:

- retaliate or discriminate against an employee or applicant who:
 - (a) fails to provide or disclose any internet account information or fails to take any of the barred actions specified above;
 - (b) files a complaint under the Workplace Privacy Act; or
 - (c) testifies, assists or participates in an investigation, proceeding or action concerning a violation of the Workplace Privacy Act; or
- use any inadvertently acquired usernames, passwords or account information to access the employee's or applicant's personal internet account, share this information with anyone, or fail to delete this information as soon as practicable.

Under Nebraska law, a "personal internet account" does not include:

- an online account that an employer or educational institution supplies or pays for, except when the employer or educational institution pays only for additional features or enhancements to the online account; or
- an online account that is used exclusively for a business purpose of the employer.

An employer may request access to a personal internet account during an investigation if the employer has specific information about either:

- potentially wrongful activity taking place on the personal internet account; or

- an unauthorised download or transfer of the employer's private proprietary information, private financial data or other confidential information.

Additionally, to the extent permitted under applicable laws, employers may:

- promulgate and maintain lawful workplace policies governing the use of the employer's equipment, including internet use;
- request or require an employee or applicant to disclose access information to the employer to gain access to:
 - (a) an electronic communication device supplied by or paid for in whole or part by the employer; or
 - (b) an account or service provided by the employer, obtained by virtue of the employment relationship or used for the employer's business purposes;
- restrict or prohibit an employee's access to certain websites while using:
 - (a) a device supplied by or paid for in whole or part by the employer; or
 - (b) an employer's network or resources;
- monitor or access data stored on the employer's equipment or network; and
- access employee or applicant information:
 - (a) available in the public domain; and
 - (b) obtained in compliance with the Workplace Privacy Act.

Employees or applicants may bring a civil action for violations of Nebraska's Workplace Privacy Act. The employee or applicant must bring the action in the district court of the county where the alleged violation occurred within one year of the date of the alleged violation or the discovery of the alleged violation, whichever is later. A successful plaintiff may be entitled to:

- injunctive relief;
- general damages;
- special damages; and
- reasonable attorneys' fees and costs.

Intercepted Communications

In Nebraska, any person who intercepts, discloses or intentionally uses a communication in violation of

Nebraska's prohibition against intercepted communications may be liable. This law covers all Nebraska employers and employees.

Under Nebraska law, no person may intentionally intercept a wire, electronic or oral communication unless:

- the person is a party to the communication;
- one party to the communication gives prior consent to the interception, and the interception does not otherwise violate the law;
- the interceptions are done in the normal course of an internet provider's work; and
- it is a lawful interception.

The law also makes it illegal for any person to:

- use or disclose the contents of any intercepted communication; and
- give notice to any person that an investigative or law enforcement officer is authorised to intercept communications if the notice is to obstruct, impede or prevent that interception.

The law provides a private cause of action to any person whose wire, electronic or oral communication is intercepted, disclosed or intentionally used in violation of the law. Available relief includes:

- preliminary and other equitable or declaratory relief;
- reasonable attorneys' fees and other litigation costs;
- the greater of:
 - (a) actual damages suffered by the plaintiff and any profits made by the violator because of the violation; or
 - (b) statutory damages of either USD100 a day for each violation or USD10,000, whichever is greater; and
- specified statutory damages for certain violations involving the viewing of a private satellite video or radio communication.

Disclosure of Employment History

Under Nebraska law, an employer may disclose the following information about a current or former

employee's employment history to a prospective employer with the current or former employee's written consent:

- date and duration of employment;
- pay rate and wage history;
- job description and duties;
- the most recent written performance evaluation prepared before the request date if provided to the employee during their employment;
- attendance records;
- results of drug or alcohol tests administered within one year before the request;
- threats of violence, harassing acts or threatening behaviour related to the workplace or directed at another employee;
- whether the employee was voluntarily or involuntarily separated from employment and the reasons for the separation; and
- whether the employee is eligible for rehire.

Employers who disclose this information in good faith are immune from civil liability for the disclosure. A former employee can rebut the presumption of good faith by showing that the information disclosed by the employer was false and the employer knew of its falsity or acted with malice or reckless disregard for the truth.

Truth and Deception Examination

No employer or prospective employer may require as a condition of employment or continued employment that a person submit to a truth and deception examination unless the employment involves public law enforcement.

An employer or prospective employer may ask an employee or applicant to submit to a truth and deception examination if:

- the examiner does not ask questions concerning the examinee's:
 - (a) sexual practices;
 - (b) labour union, political or religious affiliations; or
 - (c) marital relationships;
- the employer gives the examinee written and oral notice that:
 - (a) the examination is voluntary; and

- (b) the examinee may discontinue the examination at any time;
- the employee or applicant signs a form stating that the examination is being taken voluntarily;
- the examiner asks prospective employees job-related questions;
- the employer does not preselect job applicants for a truth and deception examination in a discriminatory manner;
- the examination concerns a specific investigation;
- the examination results are not the sole determinant in an employee's termination; and
- the employer keeps the following on file for one year:
 - (a) all questions the examiner asks during the examination; and
 - (b) the examinee's responses.

The law does not provide for a private right of action. However, the Nebraska Supreme Court recognises a claim for wrongful discharge in violation of public policy where an employer terminated an employee for refusing to submit to a polygraph test.

Prohibited Use of Social Security Numbers

In Nebraska, an employer may use more than the last four digits of an employee's SSN only for the following purposes:

- compliance with state or federal laws, rules or regulations;
- some internal administrative purposes, including providing more than the last four digits to third parties for administration of personnel benefit provisions for the employer and employment screening and staffing; or
- commercial transactions freely and voluntarily entered into by the employee with the employer to purchase goods or services.

Nebraska law requires that employers may not:

- publicly post or display more than the last four digits of an employee's Social Security number;
- require an employee to transmit more than the last four digits of their SSN over the internet unless the connection is secure, or the information is encrypted;

- require an employee to use more than the last four digits of their SSN:
 - (a) to access an internet website unless a password, unique personal identification number or other authentication device is also required to access the internet website; or
 - (b) as an employee number for any employment-related activity; or
- use more than the last four digits of an employee's SSN:
 - (a) as an identification number for occupational licensing;
 - (b) as an identification number for drug-testing purposes except when required by state or federal law;
 - (c) as an identification number for company meetings;
 - (d) in files with unrestricted access within the company;
 - (e) in files accessible by any temporary employee unless the temporary employee is bonded or insured under a blanket corporate surety bond or equivalent commercial insurance; or
 - (f) for posting any company information.

Genetic Testing

Nebraska law prohibits employers from using genetic information as a basis for employment decisions. Under Nebraska law, an employer may not:

- fail or refuse to hire, recruit or promote an employee or applicant for employment because of genetic information that is unrelated to the ability to do the job;
- discharge or discriminate against an employee or applicant regarding their terms, conditions or privileges of employment because of genetic information that is unrelated to the ability to do the job;
- limit, segregate or classify an employee or applicant in a way that adversely affects the employee's or applicant's status or employment opportunities because of genetic information that is unrelated to the ability to do the job; or
- require an employee or applicant to submit to a genetic test or to provide genetic information as a condition of employment or promotion.

In Nebraska, a genetic test does not include a routine physical examination or a routine analysis (including chemical analysis) of body fluids unless conducted specifically to determine the presence, absence or mutation of a gene or chromosome.

The law covers all employees except individuals employed:

- in the domestic service of any person; or
- by their parent, spouse or child.

4. Foreign Workers

4.1 Limitations on Foreign Workers

Foreign workers in Nebraska must show proof of identity and authorisation to work in Nebraska. The Immigration Reform and Control Act of 1986 (IRCA) requires employers to confirm the identity and employment eligibility of all new employees.

4.2 Registration Requirements for Foreign Workers

In Nebraska, every public employer and public contractor must register with and use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within Nebraska. Every contract between a public employer and public contractor must contain a provision requiring the public contractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within Nebraska.

5. New Work

5.1 Mobile Work

Nebraska law has not adopted any specific requirements regarding mobile work. Employees who work remotely are generally subject to the same protections as on-site employees under Nebraska and federal law.

Employees in Nebraska are increasingly requesting mobile work as an accommodation under the Pregnant Workers Fairness Act (PWFA) and Americans with Disabilities Act (ADA). Employers should con-

tinue to be mindful of the obligations to engage in the interactive process with employees who request reasonable accommodations, including remote work, and complete a thorough review as to whether mobile work may be a reasonable accommodation.

5.2 Sabbaticals

Sabbaticals are increasing in popularity in Nebraska. Nebraska has no specific legal restrictions applicable to sabbatical leave. Employers who choose to offer sabbaticals should specifically outline the eligibility requirements, duration and other details in the employer's internal policies to ensure non-discriminatory administration. When creating a sabbatical policy, employers should consider at a minimum:

- whether the leave is paid or unpaid;
- what benefits will continue to accrue during leave (eg, paid time off); and
- what benefits will be available while the employee is on leave.

5.3 Other New Manifestations

In Nebraska, there is an increasing focus on digitalisation and collaboration in the workplace. The movement has become known as “new work”. “New work” looks different for every employer and incorporates innovative concepts such as desk sharing, hybrid work and the use of AI.

Employers who are embracing “new work” have prioritised workplace flexibility and automation. The infrastructures that have been put in place to promote workplace flexibility have resulted in many accommodation requests under the Pregnant Workers Fairness Act and the Americans with Disabilities Act (ADA) being reasonable requests that do not cause the employer undue hardship. See 5.1 **Mobile Work**.

6. Collective Relations

6.1 Unions

The National Labor Relations Act (NLRA) applies to most private sector employers, including manufacturers, retailers, private universities and health care facilities. The NLRA does not apply to: federal, state or local governments; employers who employ only

agricultural workers; and employers subject to the federal Railway Labor Act. The NLRA protects the rights of employees to form, join and support a union or to refrain from doing so. Employees who want a union to be their collective bargaining representative can authorise the union to bargain with their employer over employee wages, hours and working conditions.

Under Nebraska law, state and local public employees have the right to form, join and participate in any employee organisation of their choosing, or to refrain from such. The rights of state employees are largely governed by the State Employees Collective Bargaining Act (SECBA) as well as the Industrial Relations Act (IRA). The rights of county, municipal, public school and other local government employees with respect to collective bargaining is covered solely by the IRA.

Nebraska law prohibits employers from denying a person employment because of membership or non-membership of a labour organisation.

6.2 Employee Representative Bodies

State and local government public employees desiring to be represented by a labour organisation for purposes of collective bargaining may do so by filing a petition with the Nebraska Commission of Industrial Relations (CIR). Pursuant to the rules of the CIR, such a petition must contain the following:

- a description of the appropriate unit or the unit claimed to be appropriate by the petitioner for purposes of exclusive representation – the description shall indicate the job classifications and general geographic locations of employees sought to be included and excluded from the unit;
- the approximate number of employees in the unit claimed to be appropriate;
- the date of recognition or certification, if any, of the unit and the expiration date of any applicable agreement;
- the names, addresses and telephone numbers of each interested labour organisation;
- a request for an election, which shall be supported by a showing as provided in Rule 10;
- a concise statement of the petitioner's position with reference to any controversy concerning procedures for the conduct of the election; and

- a concise prayer for the relief or order sought.

6.3 Collective Bargaining Agreements

Under Nebraska law, state and local government public employees are to be subject to rates of pay and conditions of employment which are comparable to the prevalent wage rates paid and conditions of employment maintained for the same or similar work of workers exhibiting like or similar skills under the same or similar working conditions. In the event the parties cannot reach an understanding as to what is “comparable”, the dispute is submitted to the Nebraska Commission of Industrial Relations for determination.

7. Termination

7.1 Grounds for Termination

At-Will Terminations

If the employment relationship is “at will”, it means that an employee has no contractual right to continued employment. Best practices dictate that employers should have clear and explanatory documentation of the termination decision and the basis for any employment termination. In the context of a lawsuit claiming that the termination decision was unlawfully discriminatory or retaliatory, many statutes permit an employer to avoid liability where they are able to articulate a legitimate, non-discriminatory (and/or non-retaliatory) basis for making their decision.

Termination of Employment by Operation of Contract

Where the employer and employee have entered into an employment agreement, that agreement will often address how and under what circumstances the employment relationship will terminate. Close attention should be paid to the language of the employment agreement, especially where there are defined terms addressing termination for “cause”, “change of control” and other provisions.

Employees are not entitled to severance pay as a result of termination unless the employer agrees to provide it according to the terms of an agreement or policy or makes a discretionary decision to offer it. Many employers offer severance pay upon termina-

tion. Best practices dictate that severance or separation agreements include a release and waiver of all claims against the employer (unless release and waiver is precluded by explicit operation of law).

7.2 Notice Periods

Nebraska law does not dictate any specific requirements concerning the termination of the employment relationship unless an employment contract, collective bargaining agreement or employer policy dictates otherwise.

WARN Act Obligations

Nebraska has not adopted a mini-WARN Act, but instead follows the federal Worker Adjustment Retraining and Notification Act of 1988 (the “WARN Act”) which applies to any business that employs 100 or more employees (excluding part-time employees) and terminates employees under circumstances that qualify as a “plant closing” or “mass lay-off”. In those instances, the employer must provide affected employees and certain government officials at least 60 days’ advance notice of the job-loss event. Employers that fail to do so may be required to pay the affected employees back pay for each day of the violation, reimburse them for any loss of benefits and medical expenses incurred, and pay civil penalties.

7.3 Dismissal for (Serious) Cause

Nebraska law does not recognise dismissal for cause protections for employees as a matter of law. The default employment relationship in Nebraska is an at-will employment relationship. An employer can forfeit its at-will right to terminate an employee by promising employment for a fixed period or stating (including verbally) that employment will only be terminated under certain circumstances, such as for “good cause” or “good reason”. Such “for cause” agreements generally identify serious policy breaches, criminal charges or other misconduct as grounds for termination of the employment or a requirement that the relationship may only be terminated following payment of liquidated or other commensurate damages under the terms of the contract. Failure to adhere to the terms of the contract may result in breach and potential claims for damages for non-compliance.

7.4 Termination Agreements

Nebraska permits termination agreements that offer severance benefits in exchange for a release of claims against the employer. In Nebraska, there are no specific formalities required. However, Nebraska employers must follow certain federal requirements to obtain an enforceable release of claims.

Waivers by employees aged 40 or over are subject to special procedures to obtain a release of claims under the federal Age Discrimination in Employment Act (ADEA). In order for a waiver of claims to be valid under the ADEA, the release and waiver provisions must:

- be written in plain language understandable by the average individual eligible for the severance;
- specifically refer to ADEA claims and rights;
- not cover prospective or future rights or claims;
- be in exchange for valuable consideration in addition to any benefits or pay to which the employee was already entitled;
- advise the employee, in writing, to consult with an attorney before signing;
- provide the employee 21 days to consider the agreement; and
- permit the employee to revoke the agreement within seven days after it is executed by the employee.

In the case of a group termination (termination of two or more employees from the same decision-making process), employees have 45 days (not 21 days) to consider the agreement (again, with a seven-day revocation period). They also must receive a disclosure identifying:

- the class of employees eligible to receive the severance package, their ages, and the ages of all employees within the same job classification, division or organisation who are not eligible or selected for participation in the termination unit; and
- the selection criteria.

Nebraska law prohibits waivers of certain claims including claims for unemployment benefits and claims for workers’ compensation.

7.5 Protected Categories of Employee

Under Nebraska law, it is illegal for employers to discriminate in employment decisions based on certain protected categories. These protected categories of employees mirror and exceed what is covered by analogous federal laws such as Title VII of the 1964 Civil Rights Act and the ADA.

Nebraska Fair Employment Practice Act

The Nebraska Fair Employment Practice Act (NFEPA) prohibits employment-related discrimination based on:

- race and race-related characteristics, including skin colour, hair texture and protective hairstyles;
- colour;
- religion;
- sex, including pregnancy, childbirth and related medical conditions;
- disability;
- marital status; and
- national origin.

The NFEPA covers:

- employers with 15 or more employees for each working day in 20 or more calendar weeks in the current or preceding calendar year and any agent of the employer;
- any party whose business is financed in whole or in part under the Nebraska Finance Authority Act, regardless of the number of employees;
- the state, state agencies and state political subdivisions, regardless of the number of employees;
- employment agencies; and
- labour organisations.

Prohibited conduct

Under the NFEPA, an employer may not, based on an individual's protected status:

- fail or refuse to hire an applicant;
- discharge an employee;
- harass any individual;
- otherwise discriminate against any individual regarding compensation, terms, conditions or privileges of employment;

- limit, advertise, solicit, segregate or classify employees in any way that would:
 - (a) deprive or tend to deprive any individual of employment opportunities; or
 - (b) otherwise adversely affect an individual's status as an employee.

Individual supervisor liability

The NFEPA does not specifically address whether individual supervisors are liable for discriminatory acts against employees. However, individual supervisors are likely not liable because the NFEPA is modelled after Title VII. The Nebraska Supreme Court has previously looked to Title VII when interpreting the NFEPA. Because federal courts have ruled that individual supervisors are not "employers" liable for discriminatory acts under Title VII, it is also unlikely that individual supervisors would be liable under the NFEPA. However, a federal court interpreting NFEPA has held that an employer may be liable for an employee's unlawful retaliation.

Nebraska Age Discrimination in Employment Act

The Nebraska Age Discrimination in Employment Act (NADEA) prohibits employment discrimination based on a person's age where the person is 40 or older. The NADEA applies to:

- employers with 20 or more employees for each working day in 20 or more calendar weeks in the current or preceding calendar year;
- any person acting, directly or indirectly, in the interest of an employer;
- the state, its political subdivisions and state agencies, regardless of the number of employees;
- any party whose business is financed in whole or in part under the Nebraska Investment Finance Authority Act;
- employment agencies; and
- labour organisations.

Prohibited conduct

Unless the reasonable demands of a position require an age distinction, an employer may not, based on an individual's age:

- refuse to hire an applicant;
- discharge an employee;

- otherwise discriminate against any individual regarding the employee's terms, conditions or privileges of employment; or
- wilfully use an organisation that discriminates against individuals based on age for hiring or recruiting employees – covered organisations include:
 - (a) employment agencies;
 - (b) placement centres;
 - (c) training schools or centres;
 - (d) labour organisations; and
 - (e) any other organisation that discriminates against individuals based on age.

Employers, employment agencies and labour organisations also may not retaliate against individuals for protected conduct. Specifically, an employer may not discharge, expel or otherwise discriminate against any individual because the individual:

- opposed any unlawful employment practice under the NADEA;
- filed a charge or suit under the NADEA; or
- testified, participated or assisted in any proceeding under the NADEA.

Individual supervisor liability

Individual supervisors are likely not liable for discriminatory acts against employees under the NADEA.

HIV Discrimination Act

The Nebraska HIV Discrimination Act (NHDA) applies to all employers and prohibits employment discrimination based on an individual having or being suspected of having:

- a human immunodeficiency virus (HIV) infection; or
- acquired immunodeficiency syndrome (AIDS).

Prohibited conduct

An employer may not, based on an individual's protected status:

- refuse to hire an applicant;
- discharge an employee; or
- otherwise discriminate against an individual regarding compensation, terms, conditions or privileges of employment.

These prohibitions do not apply where the individual having or suspected of having an HIV infection or AIDS either:

- poses a direct threat to the health or safety of that individual or other individuals; or
- is unable to perform the duties of their job or the job they are applying for.

Individual supervisor liability

Individual supervisors are likely not liable for discriminatory acts against employees under the NHDA.

Genetic Information and Testing Law

Under the Nebraska Genetic Information and Testing Law (NGITL), employers may not discriminate against employees or applicants because of the individual's genetic information that is unrelated to their ability to perform the duties of a particular job. The NGITL applies to all employers with one or more employees but does not include individuals employed in the domestic service of any person.

Prohibited conduct

An employer may not, based on an individual's protected status:

- fail or refuse to hire, recruit or promote an employee or applicant;
- discharge an employee;
- otherwise discriminate against an employee or applicant regarding compensation, terms, conditions or privileges of employment;
- limit, segregate or classify an employee or applicant in a way that:
 - (a) deprives or tends to deprive the individual of employment opportunities; or
 - (b) otherwise adversely affects their status; or
- as a condition of employment or promotion, require an employee or applicant to:
 - (a) submit to a genetic test; or
 - (b) provide genetic information.

The NGITL does not prohibit:

- an employee from voluntarily giving an employer genetic information that relates to the employee's health or safety in the workplace; or

- an employer from using genetic information that an employee provided to protect the employee's health or safety.

Individual supervisor liability

Individual supervisors are likely not liable for discriminatory acts against employees under the NGITL.

8. Disputes

8.1 Wrongful Dismissal

An employee's ability to bring a claim of wrongful dismissal must be predicated on some violation of law (such as termination due to discrimination or retaliation for a protected activity, or a contractual right conferred upon the employee by agreement between the employer and employee).

Consequences for a wrongful dismissal are dependent on the remedy authorised by the particular statute or theory under which the aggrieved employee has raised the issue. By way of example, an employee claiming discrimination in violation of Title VII may be entitled to monetary damages for:

- lost wages and benefits;
- back pay;
- front pay;
- reinstatement;
- injunctive relief;
- compensatory damages;
- attorney's fees; and
- other costs associated with bringing the claim.

Where the wrongful dismissal claim stems from the breach of a contract, similar "make whole" remedies may be available if the dismissal was in retaliation for engaging in a right protected by law or resulted in a breach of collective bargaining agreement, whereby an arbitration award may follow to "make whole" the employee and award lost wages and potential reinstatement. Wrongful dismissal that results in a breach of an employment contract may result in contractual damages stemming from the terms of the agreement.

8.2 Anti-Discrimination

An aggrieved employee may bring a claim for discrimination under either federal or state civil rights laws. These claims are analysed under a burden-shifting framework. In short, an employee must first establish a *prima facie* case of discrimination in that they:

- were a member of a protected class;
- suffered an adverse employment action; and
- were treated differently to another employee who is outside their protected class.

From there, an employer may challenge this showing by rebutting it with a legitimate, non-discriminatory reason for its action against the employee. Finally, the employee may then challenge this reason by establishing that any such reason was pretextual and this reason was otherwise an attempt to cover up the employer's true discriminatory motive.

Actual damages available vary by statute but, generally, an employee may seek monetary damages for:

- lost wages and benefits;
- back pay;
- front pay;
- reinstatement;
- injunctive relief;
- compensatory damages;
- attorney's fees; and
- other costs associated with bringing the claim.

8.3 Digitalisation

Virtual proceedings and other remote measures are frequently used across all forums in which an employment dispute may be litigated. No single rule has arisen across Nebraska concerning the use of digital technologies in the adjudication of employment disputes. Requirements have developed dependent on the preferences of the forum in this regard.

Federal courts, Nebraska state courts and administrative agencies (eg, the EEOC, NLRB) continue using remote methods such as telephone conferencing and video platforms such as Zoom or Microsoft Teams to conduct fact-finding, facilitate alternative methods of dispute resolution, and for routine aspects of case management. These measures are even used to hold

hearings on routine motions, subject to the preference of the judge or officer conducting the proceeding.

9. Dispute Resolution

9.1 Litigation

The proper forum for an employment-related dispute varies on the nature of the claim asserted.

Claims for discrimination arising under federal law (eg, Title VII, ADA, ADEA) must first be administratively exhausted with an administrative agency (eg, NEOC, EEOC) before such claims may be brought as part of a lawsuit in court.

Unlike discrimination claims, wage and hour claims arising under Nebraska and federal law may either be litigated in the state or federal courts or be brought before the Nebraska Department of Labor (NDOL).

Claims regarding workers' compensation and unemployment insurance benefits are appealed respectively through the administrative processes of the Nebraska Workers' Compensation Court and the NDOL. These processes typically involve:

- an initial benefits re-determination;
- an appeal and a hearing of the re-determination; and
- a final internal appeal mechanism before each commission's internal review commission.

Decisions of the review commission may then be appealed to the state's circuit courts and seek ultimate review from the Nebraska Supreme Court.

Claims regarding workplace safety follow similar administrative procedures. Generally, such claims flow from complaints or violations identified by the Occupational Safety and Health Administration (OSHA) that result in the issuance of a citation by OSHA. Nebraska does not have its own OSHA-approved state plan, but instead operates under the jurisdiction of the federal OSHA.

Finally, claims related to activity protected by the NLRA or for conduct otherwise covered by a collective bargaining agreement are subject to the requirements of the NLRA. An employee claiming to have

been subject to an unfair labour practice must file a charge with the NLRB, which will be adjudicated under the NLRB's administrative processes. Employees covered by a collective bargaining agreement who raise claims related to their employment must, however, grieve such claims with their union. Such claims will be resolved pursuant to the terms of the collective bargaining agreement, which may result in binding arbitration of the dispute. The NLRA only applies to non-managerial employees of private employers engaged in substantial interstate commerce.

9.2 Alternative Dispute Resolution

Nebraska law generally favours private adjudication of disputes. If the employer and employee have entered into an enforceable agreement to arbitrate a dispute, and the disputed matter is the type of claim that the parties agreed to arbitrate, the courts will typically order the parties to proceed to arbitration.

Arbitration can cover the full range of employment-related disputes. However, employers should be aware that the NLRB has recently begun to intensely scrutinise over-broad arbitration agreements that effectively cover disputes arising under the NLRA. As a matter of policy, the NLRB has stated that such over-broad agreements deny employees the right to exercise rights afforded to them by the NLRA. In adopting arbitration policies, employers should be mindful and use care in working such agreements to avoid the potential for an unfair labour practice charge in this regard.

9.3 Costs

Whether a prevailing employee or employer may be awarded attorney's fees or other costs depends on the specific legal claims and the circumstances of the case.

By way of example, in employment disputes involving federal claims such as those under Title VII of the Civil Rights Act, the ADA or the FLSA, prevailing employees may be entitled to attorney's fees and costs. These statutes typically include fee-shifting provisions, meaning that if the employee wins the case, the court can order the employer to pay reasonable attorney's fees and court costs.

With state law claims, each party typically bears its own legal fees.

Trends and Developments

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Rembolt Ludtke LLP is based in Nebraska, its employment and labour law team providing a comprehensive range of services including advice and counsel, training, and litigation of claims before administrative agencies and state and federal courts. The employment team assists clients with a proactive approach to workplace matters by providing proper planning, management training, development of effective policies and practices, and audits that expose potential issues and shape appropriate responses.

The team's "First Friday Webinar" series has received regional recognition and is just one tool employed to keep clients abreast of the changing legal landscape. When necessary, litigation is vigorously pursued and defended, including lawsuits involving non-competes and non-solicitation agreements. The labour team advises employers on organising drives, defends unfair labour practice charges and represents employers in arbitrations and collective bargaining.

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Introduction

This chapter of the guide provides a broad overview of some of the unique aspects of Nebraska employment law. Like Nebraska's one-house legislature (the Unicameral) and its status as the only state served solely by publicly owned power utilities, Nebraska employment law has some interesting quirks practitioners advising Nebraska organisations should be familiar with.

Nebraska Nuances

Employment at will is the foundation, but...

Employment at will remains the foundation to every employment relationship in Nebraska. "When the employment is not for a definite term, and there are no contractual or statutory restrictions upon the right of discharge, an employer may lawfully discharge an employee whenever and for whatever cause he chooses, without incurring liability." However, there are some unique twists to Nebraska's application of the at-will rule.

Oral contracts

Nebraska law recognises that oral statements by an employer or employee can alter an otherwise employment-at-will relationship. In *Hebard v Am. Tel. & Tel. Co.*, 228 Neb. 15, 17, 421 N.W.2d 10, 12 (1988) the plaintiff employee alleged he had an oral contract with his employer with respect to employment and eligibility for incentive compensation. Finding the plaintiff employee stated a cause of action, the Nebraska Supreme Court held that "[o]ral representations may,

standing alone, constitute a promise sufficient to create contractual terms which could modify the at-will status of an employee".

Promissory estoppel

Nebraska is in the minority of jurisdictions that recognise the doctrine of promissory estoppel in the employment context. Promissory estoppel is generally defined as "[a] promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise".

For example, in *Goff-Hamel v Obstetricians & Gynecologists, P.C.*, 256 Neb. 19, 588 N.W.2d 798 (1999), the plaintiff worked for a medical clinic for 11 years when she was approached by a competing practice in another town inquiring if she would come and work for them. The plaintiff initially declined the job offer, stating that she had made commitments to complete several projects for her current employer. A few months later the plaintiff was once again asked to "jump ship and come work for" the competing practice. At this time, the plaintiff expressed interest and accepted an offer for a full-time position with the competing practice, provided she could give several months' advance notice to her current employer and complete several on-going projects. The plaintiff subsequently gave notice to her current employer and made arrangements to move and begin her new job.

One day before the plaintiff was to commence her job with the competing practice, she was told that she should not report for work because the wife of one of the owners of her new employer opposed the hiring of the plaintiff. Consequently, the plaintiff – an at-will employee – was terminated before she even commenced her employment with the competing practice.

The plaintiff subsequently brought suit seeking damages for breach of an alleged oral employment contract and damages for the plaintiff's detrimental reliance on a promise of employment. On appeal, the Nebraska Supreme Court held that the doctrine of promissory estoppel applied and the plaintiff should be able to recover for any damages she sustained as a result of her detrimental reliance on the new employer's unfulfilled promise of employment. Thus, the court created an exception to employment at will for instances in which the employee has relied to her detriment on a promise made by an employer that the employer should reasonably expect the employee to rely upon.

Employment policies and employee handbooks

Nebraska recognises that statements made in employment policies and handbooks can alter at-will employment. In *Jeffers v Bishop Clarkson Memorial Hospital*, 222 Neb. 829, 387 N.W.2d 692 (1986), the plaintiff received an employee handbook that included express procedures to be followed in processing grievances. After the plaintiff employee was terminated, the plaintiff initiated a grievance action according to the procedures in the employee handbook. The Nebraska Supreme Court held that the plaintiff stated a cause of action as the employee handbook established a procedure for employees to challenge employment actions that were not followed by the employer.

For this reason, prudent employers now include strong at-will language and express disclaimers in their employee handbooks.

Implied covenant of good faith and fair dealing

Nebraska has a novel application of the implied covenant of good faith and fair dealing in employment. First, case law suggests it will only be implied in situations: (i) where an employee has been deprived of a constitutional or statutory right; or (ii) involving

employment contracts that provide the employee cannot be terminated but for just cause. Second, the covenant will only be implied "in the context of 'employment termination,' not in the general contexts of the employment relationship or of the conduct between employer and employee prior to termination".

The cornhusker circumvention: Neb. Rev. Stat. Section 20-148

Like the federal Title VII of the Civil Rights Act, the Nebraska Fair Employment Practice Act (NFEPA) prohibits, among other things, employers from discriminating against individuals on the basis of race, colour, religion, sex, disability or national origin, but adds "marital status" as an additional protected class. NFEPA requires employees to file an administrative charge of action with the Nebraska Equal Opportunity Commission (NEOC) within 300 days after the occurrence of the alleged unlawful employment practice. Exhaustion of this administrative process is a prerequisite prior to instituting a private action alleging a NFEPA violation and such action must be filed within 90 days after notice of the last action the NEOC takes on the charge.

However, a unique Nebraska statutory nuance allows claimants to skip the administrative process prescribed by NFEPA and proceed directly to court. Section 20-148 of the Nebraska Revised Statutes provides:

"(1) Any person or company, as defined in section 49-801, except any political subdivision, who subjects or causes to be subjected any citizen of this state or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the United States Constitution or the Constitution and laws of the State of Nebraska, shall be liable to such injured person in a civil action or other proper proceeding for redress brought by such injured person.

(2) The remedies provided by this section shall be in addition to any other remedy provided by Chapter 20, article 1, and shall not be interpreted as denying any person the right of seeking other proper remedies provided thereunder."

This statute was enacted “to provide an alternative remedy for plaintiffs who otherwise would be trapped in bureaucratic backlogs such as the one at NEOC”. However, it is a procedural statute that does not create any new substantive rights. Thus, when proceeding under this procedural loophole, NFEPA claims are still bound by the 300-day statute of limitations.

Protections for employee political activity: Neb. Rev. Stat. Section 32-1537

Nebraska is in a small minority of states that criminalises certain interference with employee political activity. Enacted in 1994, Nebraska’s law provides:

“Any person who (1) coerces or attempts to coerce any of his or her employees in their voting or in any other political action at any caucus, convention, or election held or to be held in this state or (2) attempts to influence the political action of his or her employees by threatening to discharge them because of their political action or by threats on the part of such person to close his or her place of business in the event of the passage or defeat of any issue on the ballot, in the event of the election or defeat of any candidate for public office, or in the event of the success or defeat of any political party at any election shall be guilty of a Class IV felony.”

No reported case law interpreting or applying Section 32-1537 exists.

Nebraska Wage Payment and Collection Act

The Nebraska Wage Payment and Collection Act (NWPCA), Neb. Rev. Stat. Sections 48-1228 to 48-1236, regulates the payment of wages and fringe benefits. Its coverage is broad, covering private and public employers regardless of size, even a “personal representative of the estate of a deceased individual”. The NWPCA’s answer to common employment scenarios differs from other jurisdictions.

Deductions from pay

Under the NWPCA an employer can only make deductions or withholdings from wages owed to an employee in three situations:

- where the employer is required to or may do so by applicable law (eg, taxes);

- where required by a court order (eg, child support); or
- the employee has authorised such deduction or withholding in a written agreement with the employer.

Thus, when an employee separates from employment while owing the employer money or fails to return the employer’s property or equipment, absent a written agreement authorising a wage deduction for such, the employer’s only remedy is a legal action against the employee.

Changes in pay dates

The NWPCA requires 30 days’ advance written notice before an employee’s regular pay date can be changed.

Commissions

The NWPCA’s definition of “wages” includes commissions. Disputes over the payment of commissions post-termination are a significant source of NWPCA litigation. The NWPCA provides that commissions are owed for “all orders delivered and all orders on file with the employer at the time of separation of employment less any orders returned or canceled at the time suit is filed”. However, employers and employees can contract around this default rule provided the contract was effective: (i) at the commencement of employment; or (ii) at least 90 days prior to separation.

Paid leave

Whether the NWPCA requires the payment of unused paid leave benefits to a former employee has been the subject of litigation and statutory revisions. As a result of these legislative changes and judicial interpretations, the current state of the law is that earned and unused vacation leave must be paid out upon separation. Vacation includes paid time off (PTO) benefits, but does not include paid “sick leave”. Whether and how the NWPCA applies to the recent voter-enacted Nebraska Healthy Families and Workplaces Act remains to be seen.

Final paycheck

The NWPCA requires most employers to pay a separated employee all wages owed on the earlier of: (i) the next regular payday; or (ii) two weeks from the date of

termination. The rule for employers that are “political subdivisions” depends upon when the next meeting of the governing body is to occur: (i) if separated at least one week before the next meeting of the governing body, the final wages are due within two weeks of that meeting; or (ii) if separated less than one week before the next meeting, the final wages are due within two weeks of the next regularly scheduled meeting of the governing body that follows that meeting.

Nebraska’s lunch break law: Neb. Rev. Stat. Section 48-212

Since 1931, Nebraska has regulated the meal breaks for employees of “assembling plants”, “workshops” and “mechanical establishments”, none of which are defined. Specifically:

“Any person, firm, or corporation owning or operating an assembling plant, workshop, or mechanical establishment employing one or more persons shall allow all of their employees not less than thirty consecutive minutes for lunch in each eight-hour shift, and during such time it shall be unlawful for any such employer to require such employee or employees to remain in buildings or on the premises where their labor is performed. This section does not apply to employment that is covered by a valid collective-bargaining agreement or other written agreement between an employer and employee.”

While one could assume the law is a vestige of the Great Depression, the Nebraska Legislature clearly does not think so. In 2004, the statute was amended to make clear it does not apply where a collective bargaining agreement exists, to remove an exclusion for covered employers operating three shifts, and to delete language requiring the lunch break to be taken “between the hours of 12 noon and 1 p.m.”: 2004 Nebraska Laws L.B. 382.

Conclusion

In sum, Nebraska’s employment laws carry distinctive features that set Nebraska apart from other states. For attorneys advising organisations doing business in Nebraska, a solid understanding of these Nebraska nuances is essential.

USA – NORTH CAROLINA



Law and Practice

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1. Employment Terms

1.1 Employee Status

Under the Fair Labor Standards Act (FLSA) and the North Carolina Wage and Hour Act (NCWHA), employees are either exempt or non-exempt. An employee's classification by default is "non-exempt" – meaning that if the employee works more than 40 hours per week (or, in some industries, exceeds the hours in an approved 8/80 schedule), the employee is entitled to overtime pay at a rate of one-and-a-half times their hourly rate. However, there are several exceptions to this for learned professionals, highly compensated executives, computer professionals, some creative positions and administrative positions.

Employees who are exempt can be paid a salary – provided the salary meets the minimum threshold – and are not eligible for overtime. Misclassification of employees as exempt when they should be non-exempt can result in fines, back pay, additional punitive damages in the form of treble or double damages, and attorney's fees.

1.2 Employment Contracts

Employment contracts are not required in North Carolina. In fact, in the absence of a contract for a definite period of time, all North Carolina employees are employed "at will". If employers enter into contracts with employees they must be:

- in writing;
- signed; and
- for a definite period of time.

1.3 Working Hours

Under North Carolina law, there are no limitations to how many hours adults can work in a working week. However, as mentioned in **1.1 Employee Status**, all non-exempt employees must be paid overtime (one-and-a-half times their hourly rate) for any time more than 40 hours per week. Youth employees may only work a maximum of 18 hours during the school week when school is in session. Youth employees must also be given a rest break of at least 30 minutes after five consecutive hours of work. Flexible work arrangements are allowed. While there is no employment law defining full-time versus part-time employment, Internal Revenue Service (IRS) regulations require that full-time employees work – on average – at least 20 hours per week or 130 hours per month.

1.4 Compensation

The North Carolina and federal minimum wage is USD7.25 per hour. An injunction issued on 15 November 2024 prevented the new salary threshold for exempt salaried employees from going into effect. At this time, this means that in order to be considered an exempt salaried employee, the employee in question must meet one of the duty exceptions outlined in **1.1 Employee Status** and be paid at least USD35,568 (the previous threshold) per year. Otherwise, employees will need to be paid overtime for any hours exceeding 40 hours per week. Any earned but unpaid commissions or bonuses will need to be paid out upon termination, unless the employer has an advance written policy notifying employees that any earned commission or bonus will be forfeited upon termination.

1.5 Other Employment Terms

Employers may, but are not required to, provide for paid vacation or sick time. Any accrued paid sick or vacation time must be paid out upon termination, unless the employer has an advance written policy informing the employee of the forfeiture of these accrued benefits upon termination. Employers are required to provide unpaid leave as required for Family and Medical Leave Act (FMLA) or Americans with Disabilities Act (ADA) qualifying events. Employers must give unpaid time off to vote and four hours per school year for a parent to volunteer in their child's school. Confidentiality and/or non-disparagement clauses are allowed in employee agreements or severance agreements, within the confines of National Labor Relations Board (NLRB) guidance.

2. Restrictive Covenants

2.1 Non-Competes

The Federal Trade Commission's (FTC) 23 April 2024 decision to ban non-competes was successfully challenged in court and is currently on appeal. The current administration is highly likely to abandon the appeal, meaning the FTC's non-compete ban is not likely to go into effect. Efforts to limit non-competes for workers under a USD75,000 salary threshold (see House Bill 269) have made no progress in the General Assembly. Accordingly, in North Carolina, non-competes are only limited by the following considerations:

To be enforceable under North Carolina law, restrictive covenants must be:

- in writing;
- part of an employment contract or in connection with the sale of a business;
- supported by valuable consideration;
- reasonable as to time and territory; and
- reasonable as to the scope of activities covered by the restriction.

Valuable consideration is a key component of an enforceable non-compete under North Carolina law. Continued employment is insufficient consideration. Instead, there must be some new consideration – a promotion, a raise, a bonus or some combination

thereof – for a restrictive covenant to be valid under North Carolina law for a current employee.

Although North Carolina does not have a hard-line rule on the reasonableness of time restrictions, North Carolina courts generally approve of two-year restrictions. The duration and geographic scope of a restrictive covenant are considered together to determine if it is reasonable. Courts may approve longer restrictions if the geographic territory is relatively small – likewise, courts may approve broader geographic territories if the duration of the restriction is relatively short. Regardless, courts rarely approve restrictions of five years or more.

Courts will look at the following six factors when determining whether a non-compete or non-solicitation agreement is reasonable as to time and territory:

- the geographic area of the restriction;
- the area where the employee was assigned to, and actually did, work;
- the area in which the company does business;
- the nature of the business; and
- the nature of the employee's duty and the employee's knowledge of the business operation.

Additionally, the scope of the activities covered by the non-compete must be tied to the work performed for the employer. Courts have refused to enforce non-competes that prevent an employee from doing any work for a competitor, regardless of whether the work is of the same nature as that performed for the employer. Additionally, non-competes that preclude "direct or indirect" competition have been unenforceable owing to the scope preventing, for example, ownership of a mutual fund holding shares of a competitor.

2.2 Non-Solicits

Non-solicitation clauses have gained renewed attention in light of recent legal developments calling into question the longevity and effectiveness of non-competition agreements. The enforceability of non-solicitation clauses under North Carolina law is analysed in the same way as other restrictive covenants – ie, they must be in writing, part of a contract for employment, for valuable consideration, and reasonable as to time and territory. Non-solicitation agreements tailored to

the employer's customers and employees are routinely upheld, even when there is no geographic restriction. Even so, employers should limit those restrictions to customers and employees of the employer for a period of time (usually a year) prior to termination, as North Carolina courts deem the look-back period part of the temporal restriction, which needs to be reasonable to be enforced.

3. Data Privacy

3.1 Data Privacy Law and Employment

Protection of personal data has become a focus of legislative efforts at all levels. With increased scrutiny on data privacy practices arising in European countries, many states across the USA are beginning to follow suit. Now more than ever, employers must be cognisant of previously established privacy-related laws, along with industry trends towards over-inclusivity.

Industry groups such as the International Association of Privacy Professionals (IAPP) offer more in-depth guides for navigating privacy concerns across various employment sectors.

Federal Considerations for Multi-State and Multinational Employers

Common privacy issues and areas global employers should consider include:

- employee health information and records;
- records relating to and obtained via background checks;
- response standards and mechanisms for data breaches;
- possession and use of student or education-related data; and
- the use of and marketing or sale of personally identifiable information (PII).

The following examples of laws and areas of work may have greater implications with respect to employee personal privacy issues:

- the Health Insurance Portability and Accountability Act (HIPAA) and the protections of employee personal health records;

- the ADA, which regulates when, how, and for what purposes an employer may access employee health information;
- the FMLA and the limits on obtaining and/or disclosing certain information relating to covered employee leave;
- the Fair Credit Reporting Act (FCRA) and its applications to conducting employee background checks;
- the Family Educational Rights and Privacy Act for any company operating in spaces including student data; and
- enforcement actions by various federal agencies including the FTC, the Department of Health and Human Services (DHHS), the Consumer Financial Protection Bureau (CFPB), the Federal Communications Commission (FCC), the Equal Employment Opportunity Commission (EEOC) and others.

With ever-increasing data breaches, many global employers have also instituted internal policies and response mechanisms, with some even hiring designated privacy teams. Currently, there are no federal laws regarding standardised responses relating to data breaches. It is in this area that many employers look abroad for guidance.

A growing trend in data privacy has seen companies turning to foreign and domestic guidance in crafting privacy policies and dealing with related issues. In recent years, an increasing number of employers have begun self-certifying pursuant to the strict General Data Protection Regulation (GDPR) standards via either contractual commitments or participating in the federal government's Data Privacy Foundation certification (the "US Privacy Shield").

While there is no absolute way to guarantee universal compliance, global employers operating in the USA should strongly consider opting for stricter self-governance and applying standards that may be stricter than required. The GDPR's standards – along with compliance with long-standing laws such as those discussed earlier – are quickly becoming a recommended industry norm, especially if an employer is involved in any way with the retention or handling of employee health records and data.

State Law Considerations for Employers

If the GDPR is considered the benchmark for international privacy laws, then California and the California Consumer Privacy Act (CCPA) can rightfully be seen as the domestic guidepost not only for states looking to enact their own privacy laws, but also for employers seeking to be proactive in their compliance and policies. California was the first state to enact comprehensive data privacy legislation, signing the CCPA into law on 8 June 2018 (effective 1 January 2020). Since then, 18 other states have followed suit, signing into law their own comprehensive data privacy laws – many of which are modelled on the CCPA. Included in this list are states such as Delaware, with its reputation for attracting foreign and domestic companies alike. Proposed bills in six additional states – North Carolina, Illinois, Massachusetts, Michigan, Ohio and Pennsylvania – would grant rights similar to those found in existing data privacy legislation.

Global employers operating in the USA are well-advised to stay abreast of all evolving data privacy regulations and laws. Failure to comply has and may continue to result in serious fines and penalties, in addition to loss of customer and employee trust and goodwill.

4. Foreign Workers

4.1 Limitations on Foreign Workers

Employment of foreign workers in the USA is strictly controlled, with clearly outlined categories of temporary work visas. Unless a person is a “US worker”, which for the most part includes US citizens, nationals or permanent resident card (“Green Card” holders), as well as a much smaller group granted temporary protected status, refugee status or political asylum, a foreign worker must generally have either a valid work-authorised visa or an employment authorisation document (EAD) to engage in productive employment in the USA.

The term “work permit” is used globally and suggests an ability to gain generalised employment authorisation. This is not a term found in the US immigration system, which is much more discerning and limited. Under the Immigration and National Act (INA), Con-

gress and the responsible agency (the legacy Immigration and Naturalization Service (INS), now known as the United States Immigration and Naturalization Services (USCIS)) delineate very specific categories of temporary visas that generally favour professional-level positions, with candidates who have traditional post-secondary educational credentials (namely, a bachelor’s degree or higher). As a result, not every foreign worker can be employed in the USA. The alphabet soup of visa categories attempts to cover a range of potential activities in the USA by the global community, and it extends beyond just work visas to include students, diplomats and religious workers (among others).

The list of work visas (eg, E-3, H-1B, L-1 and TN) falls far short of US employer needs, particularly today in an economy where the USA continues to have low rates of unemployment, resulting in a shortage of available workers. The work visa categories themselves are also limited in terms of what positions can be sponsored. There is no solution to fill the ranks for occupations across a broad spectrum of industries, including science, technology, engineering and mathematics (STEM)-related occupations, to fill much-needed software engineering, IT and data analytics-related roles (to name a few). It is fair to say that virtually every company in the USA has needs in these areas and for years many have had to look to non-US workers to fill their ranks. Many times, these individuals are already in the USA, often as F-1 students who are identified as top job candidates through standard on-campus recruiting efforts and the like.

Beyond these professional-level roles, other sectors of the economy – for example, construction, farming, manufacturing and the meat and poultry industry – have significant needs for workers. The USA provides only a couple of solutions for these types of roles, including the H-2A and H-2B visas, which are for temporary peak and seasonal positions. The only long-term solution in these areas is to sponsor a foreign worker for a Green Card, which is not terribly practical as it could take between two and three years to obtain and the candidate may not be able to work for the company in the USA in the interim.

A related concept is that of the “business visitor”, who can enter the USA for a short period to engage in a limited set of brief activities such as meetings, conferences, training, contract negotiations and some other related matters – all of which must stop short of productive employment or work. Obtaining a B-1/B-2 visa (B-1 for business, B-2 for tourism) can often be obtained much more easily than a work-authorised visa, so it can seem attractive for a foreign worker to use it as a workaround. The US government is well aware of abuses of the B visa, and the US Customs and Border Protection Agency (CBP) is generally on high alert to sniff out potential offenders.

A wrench can be used as a simple way to differentiate between appropriate business visitor activities and work. As a business visitor, a foreign national can meet with colleagues or customers and talk about a project involving the eventual use of wrenches, learn about how to use wrenches, and negotiate and sign a contract that involves wrenches, but the moment a foreign worker starts turning a wrench to achieve a productive end and gets paid for that service, they have entered the realm of work that requires employment authorisation. In reality, there are many occupations that do not fit neatly into the wrench example, and the determination of the appropriateness of a B entry is usually made subjectively by an individual officer who has quite extensive discretion. “Work” is a four-letter word to the CBP, and a foreign worker who utters it as the intended scope of their trip to the USA may be taken quite literally and possibly denied entry.

There are penalties for employing foreign workers without valid work authorisation if such unauthorised work is discovered, so it is important to put appropriate limitations in place for business visitors and to secure a work-authorised visa when there is productive employment involved. Employers should also keep in mind that only physical presence in the USA triggers the need for a work visa, so if they would like to employ someone remotely from another country, they are free to do that – at least from an immigration perspective. There could be other implications relating to employment law in the person’s home country, and other practicalities such as processing payroll, tax deductions and benefits, so it is important to vet those as well.

4.2 Registration Requirements for Foreign Workers

All foreign workers seeking to engage in productive employment (work) in the USA must either apply for an appropriate visa that grants work authorisation or have an otherwise-valid form of employment authorisation, such as an EAD. Most work visa categories are company-sponsored, a process that usually starts with a petition filing by the employer on behalf of the foreign worker with USCIS. At a high level, a typical work visa is obtained through the following three steps:

- USCIS petition filing by the employer;
- visa appointment/interview with a US consulate or embassy to obtain a visa sticker in the passport; and
- entry to the USA and issuance of an I-94 admission record.

It is important to remember that not every foreign worker will qualify for a visa, so it may be just a select few who can proceed through these steps. Additionally, there can be pitfalls along the way. By way of example, USCIS could ask additional questions at Step 1 and issue a Request for Evidence, or Notice of Intent to Deny, which will delay the process while the company and its counsel prepare a response and attempt to overcome the stated deficiencies. The primary visa category used by companies to employ foreign workers in professional level positions is the H-1B. There is annual allocation of H-1B visas each year (85,000) and, based on the demand in the past 20 years or so, USCIS conducts a lottery to distribute them. In most years, the chances of selection are in the range of 30%, so even when a company chooses to offer immigration sponsorship, there are no guarantees it will be successful.

Additionally, after USCIS approves the petition, the foreign worker schedules and attends a visa appointment. The US State Department, which runs the US consulates and embassies throughout the world, will conduct a background check and may otherwise review the foreign worker’s “admissibility” to the USA across three broad areas, including economic, health and security-related grounds. If there is something suspicious (or blatant) in the foreign worker’s history

or profile, the US consulate could decide not to issue the visa. If approved, the US consulate issues a visa sticker in the passport, which acts like a ticket for entry to the USA.

The last step is for the foreign worker to enter the USA. The admission process involves the person interfacing with CBP officers, who are stationed at all ports of entry, including international airports and land-border crossings. The CBP processes the foreign worker for admission and, if entry is allowed, they will receive an I-94 admission record. The I-94 is the most crucial of the documents in the visa process, as it is the primary document used to demonstrate work authorisation for I-9 purposes, and its expiration controls the foreign worker's duration of stay in the USA. The I-94 also facilitates Social Security Number applications, as well as the issuance of state driver's licences. Most foreign workers will begin paying taxes immediately, including Federal Insurance Contributions Act (FICA) withholdings, whether or not they intend to live permanently in the USA and take advantage of Social Security and Medicare benefits into retirement.

A separate group of foreign workers may be in the USA and already have an independent basis for work authorisation. By way of example, they could have a family-sponsored Green Card application pending that provides an interim EAD until the permanent residency process is complete and the Green Card issued. These individuals will not need employment sponsorship for a work visa, but that could vary depending on the facts.

Foreign workers are required to report any US address changes to USCIS within ten days of moving. Otherwise, however, the USA does not have any of the further registration requirements – such as with the local police department – that are seen in some other countries.

5. New Work

5.1 Mobile Work

Mobile or remote work has become commonplace in the post-pandemic world. While mobile work provides new opportunities and flexibility for employers and

employees, employers must manage the legal complexities of such arrangements to ensure compliance with relevant laws and regulations. Some key areas to consider are as follows.

Wage and Hour Compliance

Mobile workers are subject to the same compensation and overtime laws (federal and local) as in-office employees. The challenge this poses to employers offering mobile work arrangements is tracking working and non-working time. As many have come to find, the line between being “off the clock” and “on the clock” is often blurred. Employers should clearly outline a time-keeping policy requiring accurate recording of all time worked and requiring advance approval before working any overtime, including minor tasks such as after-hours communications. The policy should set out disciplinary steps for violations.

Health and Safety

Employers are responsible for ensuring a safe and healthy working environment – even for mobile/remote employees. By way of example, the Occupational Safety and Health Act (the “OSH Act”) requires employers to ensure a safe work environment, including ergonomic considerations and addressing potential hazards in the home workspace.

Further, workers' compensation benefits cover injuries “arising out of and in the course of the employment”. There is no limitation based on where a work-related accident occurs. Employees have the burden of proof to show that an injury is work-related – although arguably even a broken bone from a fall when the employee is walking between their home office and the kitchen could fall within the coverage.

Thus, the health and safety of remote workers should be expressly addressed to the extent feasible in order to limit the employer's potential liability. Best practices for employers include providing guidance on ergonomic considerations (workstation set-up and equipment provision), mental health support (resources and regular check-ins), safety policies and training (specific “at home” or “mobile” work policies), and regular reviews/risk assessments.

Privacy and Data Security

Mobile work brings increased dangers of privacy and data breaches. Employees often have access to sensitive or proprietary business information, trade secrets and other sensitive materials, personnel information and confidential customer data.

Employees should establish protocols for access, storage, transmission and use of this data. Best practices include data encryption, strict access controls (eg, multi-factor authentication), data minimisation (eg, regular review and deletion of unnecessary data), employee training, remote work policies and use of company-issued devices. Further, given the increase in data breach incidents during the past few years, employers would be wise to establish a clear data breach response plan.

Employers must also consider the privacy of the mobile employee. Although monitoring a mobile employee's activities is often an appropriate and even necessary measure to ensure and assess performance, such measures should avoid invading a remote employee's privacy. By way of example, the Electronic Communications Privacy Act (ECPA) prohibits the interception and monitoring of electronic communications without consent. If employers intend to monitor such communications, they must ensure that they have provided notice and obtained consent. Any monitoring or surveillance should also not infringe on employees' rights to engage in protected activities under the National Labor Relations Act (NLRA).

Tax Obligations and Social Security

Employers must carefully plan and manage tax obligations and compliance for mobile employees. This is because companies with mobile employees located in different states or countries may trigger withholding requirements for the employer. By way of example, a remote worker's presence in a state can create a "nexus" with that state, which may subject the employer to state income tax, sales tax and other business tax obligations. In other words, in determining tax obligations, employers must give careful attention to the location of the mobile employee – not just the location of the employer. Navigating the tax implications of remote work can be complex, and employers are

advised to consult tax professionals to ensure compliance and optimise outcomes.

Employers must navigate similar issues in the landscape of social security. Although the rules differ from those applicable to income tax, employers with cross-border remote workers could be responsible for social security taxes/contributions in the home country, the host country or both. Compliance with these regulations requires careful planning and often the assistance of legal and tax professionals to ensure that both employers and employees meet their social security obligations.

5.2 Sabbaticals

Employers may, but are not required to, provide sabbatical leave. Sabbatical leave can take many forms and can arise for a variety of reasons. Although not uniformly defined, a sabbatical is typically an extended leave of absence from work done in order to pursue personal or professional interests. Employers may grant an employee sabbatical leave for reasons such as personal travel and studies, or so the employee can pursue an additional degree or specialised education. Depending on the employee's purpose in requesting the leave, a sabbatical may range in length from a couple of weeks to several months or up to a year.

Most employers address sabbatical leave in their handbooks or policy guidelines. By way of example, an employer may set standard procedures for requesting the leave, such as a required advance notice period or a written submission justifying the nature or purpose of the leave. Similarly, an employer may choose to specify purposes for sabbatical leave, such as allowing it for educational or professional study purposes but not for personal travel. A good example of how the federal government addresses sabbatical leave can be found in Section 3396 of Title 5 of the US Code, which specifies certain employees who may receive sabbatical leave for certain specified purposes.

Another relevant consideration for employers looking to establish a standard sabbatical leave policy is how the employee taking the leave will be paid. Many employers offer incentives for certain purposes, such as reimbursement of educational expenses or travel. Employers should still take care to ensure compliance

with all applicable wage and hour laws – for instance, an employer should pay special attention if the employee's leave is taken for purposes contemplated by the FMLA. Although some employers may allow employees to take qualifying FMLA leave concurrently with approved sabbatical leave, it is recommended to have clear policies and procedures in place to ensure all statutory requirements are met.

Finally, if an employer is confronted with an instance where they are denying an employee's request for sabbatical leave, it is important to remember that any denial should be done for legitimate, non-discriminatory reasons. This consideration further reinforces the recommendation to have a clearly defined sabbatical leave policy.

5.3 Other New Manifestations

As employees return to the office (some part-time), many employers are leasing less office space in favour of new work ideas such as desk-sharing or "hotelling", whereby no one person is assigned a single workspace; instead, there are non-assigned spaces where employees can work on the various days they come in. Other employers are opting to simply rent portions of a collaborative workspace from places such as We Work instead of having dedicated private office space. If employers choose either of these options, they should be mindful of how they are asking employees to safeguard confidential information. By way of example, employers should institute policies regarding printing and proper secure disposal of confidential company information or regarding taking phone calls out of non-employees' earshot.

6. Collective Relations

6.1 Unions

North Carolina is a "right to work" state, which means that employees cannot be forced to join a union or pay dues in order to become or remain employed. Union activity has been on the rise nationally. That trend, however, largely does not extend to North Carolina, which has the lowest union density rating in the country – with only 2.4% of North Carolina's workforce being unionised. In fact, a large campaign to unionise

an Amazon warehouse in Garner, North Carolina, was rejected by Amazon workers this year.

6.2 Employee Representative Bodies

Employee representative bodies, also called employee resource groups or affinity groups, are a growing trend among employers. One of the most significant benefits of affinity groups is their power to connect people and promote inclusion among groups that are often under-represented in the workplace. The connection experienced in these groups translates remotely across physical offices and organisational groups – they can bring together employees at different levels and across departments and build a sense of shared community and belonging.

However, employers should be aware of legal issues surrounding these groups. By way of example, affinity groups should be open to everyone and treated equally. Employees who do not feel welcome to join an affinity group or to attend its events may feel excluded – or even threatened – by this employer-backed organisation. Employers must ensure they properly compensate non-exempt employees for time spent attending or participating in workplace affinity group meetings or activities. Moreover, employers risk violating federal labour law if they bargain with affinity groups regarding employees' terms and conditions of employment by:

- dominating or interfering with the formation of an affinity group and treating it as a labour organisation; or
- failing to bargain with a union that already represents employees.

Employers often sponsor, contribute funds to or otherwise support workplace affinity groups. As a result, an employer risks committing an unfair labour practice (ULP) by treating the affinity group like a labour organisation and "dominating" or "interfering" with it.

6.3 Collective Bargaining Agreements

The NLRA gives employees the right to bargain collectively with their employer through a representative or, typically, a labour union. The employer and collective employees can negotiate over employment benefits such as pay structure, health insurance and

grievance procedure. The NLRA imposes an obligation on both parties to bargain in good faith about wages, hours, and other terms and conditions of employment until the parties agree on a “collective bargaining agreement”. If the parties reach a stand-off or “impasse” before they can come to terms on an agreement, the employer may impose any terms and conditions offered to the collective employees before the impasse was reached. Once an employment contract is in place, neither the employer nor the employees may deviate from its terms without the other party’s consent.

In North Carolina, the negotiation of collective bargaining agreements between public employers and employees is prohibited by law. However, public employees do retain the right to organise or otherwise join employee associations. This means that public employees can negotiate with their employer for benefits, but any collective bargaining agreement entered into between the parties would be deemed void as an illegal contract.

7. Termination

7.1 Grounds for Termination

Motivation and Procedures for Dismissal

As North Carolina is an “at-will employment state”, employers do not need grounds for terminating employment. This means that no motivation is required to justify the termination of an employee.

There are exceptions to the employment-at-will doctrine, namely:

- the employee has contracted for a definite term of employment;
- the employee’s termination is in violation of state or federal anti-discrimination statutes; and
- the employee’s termination violates North Carolina public policy.

Contracts for a definite term of employment

Regarding the first exception, employers should communicate details surrounding the employment relationship explicitly at its inception to better maintain control of the termination process and prevent unwanted

litigation. The employer also needs to determine the likelihood of an employment dispute and document the termination accordingly. If the employer is already on notice of the likelihood of dispute, counsel should be consulted to review the evidence supporting a termination and to ensure that no relevant documents or communications are deleted.

Violation of federal or state anti-discrimination law

Regarding the second exception, employers must ensure that the rationale for ending the employment relationship does not violate federal or state law. The employer may not terminate someone owing to their membership of a protected class or in retaliation for the exercise of certain rights, for example. Employers should be cognisant of certain protections for individuals over the age of 40 under federal and North Carolina law. The federal Age Discrimination in Employment Act (ADEA) and the Older Workers Benefit Protection Act (OWBPA) prohibit discrimination based on age.

When an employer grants a release or is involved in a settlement with an employee over the age of 40, the ADEA and the OWBPA require the employer to give the employee 21 days to consider and accept the terms of any agreement. The ADEA and the OWBPA also require employers to allow the employee seven days to rescind the agreement after signing. When an employer undertakes a reduction in the force or a group lay-off, the ADEA and the OWBPA require the employer to provide affected employees with certain statistical information regarding the other individuals affected by the termination.

Violation of North Carolina public policy

Within this third exception, North Carolina Courts have recognised three distinct scenarios where termination of employment was in violation of public policy in the state, namely when:

- the termination stems from an employee refusing to break the law at the request of the employer;
- where the employee was fired for “engaging in a legally protected activity”; and
- “based on some activity by the employer contrary to law or public policy”.

Employees who maintain a claim for wrongful termination in violation of public policy can sometimes provide more expansive remedies than those available under federal law.

Group Redundancies

In North Carolina, a “group lay-off” is when a group of 20 or more workers are either partially or totally terminated from their employment at the same time. The North Carolina Supreme Court held in *Gorski* that when a group lay-off occurs, the employer must notify the local employment security office prior to the termination date and allow the employees to collect up to four weeks’ pay without the employee having to prove that they are available to work.

7.2 Notice Periods

North Carolina is an at-will employment state. This means that unless an employer contracted with an employee to work for a certain period of time, with certain terms calling for a specific period of notice, an employer can terminate an employee’s employment at any time for any non-discriminatory purpose. This means that an employer can give little to no notice prior to termination.

7.3 Dismissal for (Serious) Cause

As mentioned in **7.2 Notice Periods**, North Carolina is an at-will employment state, so an employer who does not enter into an employment contract with an employee giving that employee the right to only be terminated “for cause” can terminate an employee at any time for any non-discriminatory purpose. For employees with a contract containing a “for cause” termination provision, the employer must follow the terms of those procedures carefully. In drafting “for cause” provisions, employers should carefully consider the terms to make them tailored to the specific industry and favourable to the company. Before sending out an employment contract with a “for cause” termination provision, it is advisable for companies to speak with a local employment lawyer.

7.4 Termination Agreements

Termination agreements are generally enforceable in North Carolina. This stems from North Carolina’s interest in allowing freedom of contract, specifically in the context of modifying at-will employment agreements.

Agreements providing for severance in the event of termination are common, and courts generally hold them to be enforceable. In the past, termination agreements providing for restrictive covenants such as non-compete provisions have been enforceable by North Carolina courts. By way of example, in *United Laboratories, Inc v Kuykendall*, the North Carolina Supreme Court upheld a non-compete provision contained within a sale representative agreement as enforceable, despite the discharged employee arguing otherwise.

As discussed in **2.1 Non-Competes**, the FTC’s action to hold non-competes unlawful for all except senior executives is unlikely to proceed. However, employers may want to consider other means of lawfully protecting themselves and their investments besides non-competes, especially to the extent they operate in states where they are banned or limited. Non-disclosure agreements can be an alternative to non-compete agreements that lawfully protect an employer’s IP and investments in skills training. Federal and state trade secrets laws provide another way to protect employers when contractual protections are lacking.

Another form of agreement that can arise following the termination of employment is a release agreement, whereby an employee releases bringing any past and future legal claims that they may have grounds to bring against their former employer. In North Carolina, it is common practice to enter into a general release of claims agreement, which includes a non-exhaustive list of released claims. These general releases may include the release of claims such as wrongful discharge, emotional distress and claims under the North Carolina Persons with Disabilities Protection Act (PDPA). However, it is unlawful in North Carolina to agree to release certain claims, including claims under the NCWHA, workers’ compensation claims or rights to benefits under the North Carolina Workers Compensation Act, as well as waiver of unemployment benefits. The inclusion of one of these claims in a general release agreement can render an otherwise-enforceable agreement invalid.

7.5 Protected Categories of Employee

Protected classes under federal law include race, colour, national origin, religion, sex (including pregnancy, childbirth and other related medical conditions), sex-

ual orientation and gender identity, disability, age (40 years of age or older), citizenship status and genetic information. Therefore, and despite the “at will” element of North Carolina law, employers cannot dismiss or terminate protected employees without a non-discriminatory reason.

Some specific protections that employees and employers should be cognisant of include protections for individuals affected by pregnancy, childbirth or related medical conditions and individuals over the age of 40. By way of example, the Pregnant Workers Fairness Act (PWFA) recently went into effect and requires employers to provide reasonable accommodations to individuals affected by pregnancy, childbirth or related medical conditions, unless the accommodation causes the employer undue hardship. The PWFA prohibits employers from retaliating against qualified individuals who have sought reasonable accommodations.

Further, as discussed in **7.1 Grounds for Termination**, employers must provide employees over the age of 40 with 21 days to consider and accept the terms of any agreement under the ADEA and the OWBPA, along with seven days to rescind the agreement after signing. When an employer undertakes a reduction in force or group lay-off, the ADEA and the OWBPA require the employer to provide affected employees with certain statistical information regarding the other individuals affected by the termination.

8. Disputes

8.1 Wrongful Dismissal

North Carolina employees have a private right of action for wrongful termination in violation of the following federal claims:

- the ADA, which prohibits discrimination against disabled workers or candidates;
- the Pregnancy Discrimination Act (PDA), which prohibits termination based on pregnancy-related facts;
- the PWFA, which expands the rights of workers affected by pregnancy, childbirth or related medical conditions;

- Equal Employment Opportunity (EEO) laws;
- the ADEA, which prohibits discriminating against employees based on age (more specifically, if they are aged 40 or older); and
- Title VII of the Civil Rights Act (“Title VII”), which prohibits:
 - (a) wrongful termination due to classification of a protected class including race, colour, religion, sex (including pregnancy, gender identity, and sexuality) and national origin; and
 - (b) retaliation for reporting unsafe, illegal work practices or for any asserted protected rights.

North Carolina-specific laws largely mirror federal laws, with the addition of the following state claims.

- The North Carolina Equal Employment Practices Act (EEPA) prohibits discrimination based on race, religion, colour, national origin, age, sex or handicap (disability).
- The PDPA prohibits discrimination against persons with disabilities.
- The Retaliatory Employment Discrimination Act (REDA) prohibits retaliation based on an employee’s good faith participation in certain activities, including:
 - (a) filing or threatening to file a wage and hour claim;
 - (b) filing or threatening to file a workplace health and safety claim;
 - (c) filing or threatening to file a workers’ compensation complaint or claim;
 - (d) on the basis of genetic testing,
 - (e) possessing the sickle cell trait;
 - (f) being a haemoglobin C carrier;
 - (g) National Guard service;
 - (h) participation in the juvenile justice system;
 - (i) seeking domestic violence protective orders;
 - (j) pesticide exposure; and
 - (k) reporting activities of their employers under the Paraphernalia Control Act.

Employees can seek compensatory damages, including lost pay and lost benefits, as well as punitive, mental anguish, emotional distress, or pain and suffering damages for employer actions that are particularly egregious.

8.2 Anti-Discrimination

As mentioned in 8.1 Wrongful Dismissal, under federal Title VII, it is unlawful to discriminate on the basis of race, colour, national origin, religion, sex (including pregnancy, childbirth and other related medical conditions), sexual orientation and gender identity, disability, age (40 years of age or older), citizenship status and genetic information. The EEPA also allows for a private right of action for discrimination claims brought pursuant to the same protected classes as Title VII. Under North Carolina law, it is also unlawful to terminate someone for any reason that violates North Carolina Public Policy, which includes public policy set forth in the EEPA.

The statute of limitations for these state law claims is three years, meaning that employees could bring claims of discrimination past the traditional statute of limitations under Title VII. North Carolina courts have adopted similar tests to the federal McDonnell Douglas framework for state discrimination claims. Like federal claims, damages can include back pay and front pay, as well as compensatory damages, emotional distress damages and – in some instances – punitive damages.

8.3 Digitalisation

During COVID-19, most North Carolina counties conducted hearings virtually via Webex. Most counties have returned to full in-person hearings. However, several of the larger, more urban counties such as Mecklenburg and Wake (Charlotte and Raleigh areas, respectively) are conducting some portion of their hearings via video. Trials in North Carolina are not being conducted virtually. As of 1 July 2024, remote notarisation for affidavits needed in court proceedings is allowed. This makes it significantly easier for witnesses to prepare affidavits. The North Carolina Secretary of State maintains a searchable database to locate eNotaries, making it easy for employers to locate one should the need arise.

9. Dispute Resolution

9.1 Litigation

North Carolina does not have any forums specific to employment disputes; however, employment disputes

are frequently litigated in the North Carolina Business Court, which has mandatory jurisdiction over cases involving trade secrets. Unlike most cases filed in North Carolina superior courts, only one judge is assigned to each case in the North Carolina Business Court, and those judges are particularly familiar with the law and cases falling under their jurisdiction.

Class actions claims are available under both federal and state law. Typically, class action employment claims involve claims of wage and hour violations, employment discrimination or Employee Retirement Income Security Act (ERISA) violations.

9.2 Alternative Dispute Resolution

Ever since the passage of the Federal Arbitration Act (FAA), which provides that arbitration agreements are generally enforceable, the frequency of arbitration provisions in employment contracts has steadily risen. Arbitration provides many desirable features, such as the following, that many employers prefer.

- **Confidentiality:** Unlike a case in court, arbitration filings are typically not publicly available, leading to increased privacy during the litigation. Similarly, some arbitration agreements contain confidentiality provisions to ensure the matter is not publicised.
- **Expeditious and cost-effective resolution:** Arbitration awards are generally afforded the same binding effect as a court order or jury verdict. However, the resolution itself can often be attained much quicker than a typical court case.
- **Standard rules and procedures:** Although formal rules of evidence and civil procedure do not typically apply in arbitration, many established arbitration organisations such as the American Arbitration Association (AAA) have thorough sets of rules governing their proceedings.

Arbitration agreements can be effective tools for privately handling everything from contractual disputes to statutory discrimination claims. However, the FAA has several express carve-outs for certain types of claims for which a pre-dispute arbitration agreement either is not effective or cannot be used to waive any party's rights. These claims include those arising under certain sections of the Dodd-Frank Act, as

well as those provided by certain Commodity Futures Trading Commission (CFTC) regulations.

While arbitration agreements are common tools to determine the forum for a dispute before it arises, there are a few important considerations for employers looking to implement them. By way of example, the agreement must be mutually agreed upon; it cannot be the product of force or coercion on the employee. Similarly, although the agreement may be drafted to set a specific forum, rules, and type of arbitration or arbitrator, the terms cannot excessively favour the employer at the expense of the employee.

Drafting a pre-dispute arbitration agreement can be helpful to an employer for many reasons. However, it is recommended that employers speak with counsel to ensure the agreement is enforceable and effective.

9.3 Costs

Prevailing party costs are governed by statute in North Carolina. Currently, the North Carolina Court of Appeals has conflicting opinions as to whether awarding costs to prevailing parties under the main costs statute, North Carolina General Statutes Section 6-20, is mandatory or discretionary. The North Carolina Supreme Court has yet to take up this issue. But what is clear is that once a court moves forward with awarding prevailing party costs, those costs are limited to very specific enumerated categories under North Carolina General Statutes Section 7A-305. And counsel seeking recovery of costs must usually prove that the costs incurred were reasonable and necessary expenses in prosecuting or defending the case. The enumerated categories most pertinent to employment law litigation include:

- witness fees;
- expenses incurred in service of process by certified mail or by publication;
- costs on appeal of the original transcript of testimony;
- personal service and civil process fees;
- mediator fees;
- deposition stenographic and videographic fees;
- deposition transcript costs; and
- expert witness fees.

USA – TEXAS

Law and Practice

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Bell Nunnally & Martin has a record of success spanning more than four decades. It is among the most-respected business law firms in Texas and one of the 25 largest in North Texas. The firm provides a full range of services, including litigation, appellate law, commercial finance, corporate and securities, creditors' rights, bankruptcy, health law, IP, immigration, real estate, entertainment, M&A, tax, white-collar criminal defence, and labour and employment. Bell Nunnally's employment attorneys advise business owners and HR professionals in navigating the day-

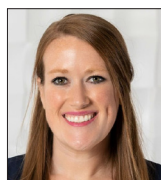
to-day maze of federal and state employment laws in Texas and across the USA. Given that employment problems can – and frequently do – turn into administrative charges or lawsuits, Bell Nunnally's employment lawyers are skilled advocates before US agencies and in the courtroom. The lawyers have litigated virtually every type of labour and employment case. Their considerable trial experience provides unique insights with which to advise employers on the steps needed to avoid litigation.

Authors



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1. Employment Terms

1.1 Employee Status

Texas follows the federal wage and hour laws. Under the federal law governing wage and hour disputes (the Fair Labor Standards Act (FLSA)), jobs are classified as either exempt or non-exempt from overtime requirements. Employees that are non-exempt from overtime are typically paid on an hourly basis and are entitled to be paid overtime for any hours worked in excess of 40 hours in a single working week. The overtime rate of pay is 1.5 times the non-exempt employee's regular rate of pay. To avoid a claim of unpaid minimum wage or overtime, it is imperative for employers to ensure non-exempt employees are accurately recording and reporting their hours worked.

Exempt employees are typically paid on a salary basis and are not entitled to be paid overtime. Thus, if an exempt employee works more than 40 hours in a working week, the employee is not entitled to be paid any additional money beyond their weekly salary. Additionally, tracking hours is not required. Sometimes, employers are inclined to classify employees as exempt in order to avoid tracking hours and paying overtime, but employers must ensure that the employee properly qualifies as exempt to avoid potential liability.

To be exempt from overtime, an employee must meet all the criteria of an applicable exemption. There are several exemptions, including the professional exemption, administrative exemption, and highly compensated employee exemption. Each exemption has its own specific requirements in order for the employee to qualify.

Employers who violate the FLSA are liable for economic damages in the form of unpaid overtime wages. If there is a violation, the employee is also entitled to liquidated damages or "double damages" that match the amount of the unpaid overtime wages, unless the employer proves it acted in good faith and had reasonable grounds to believe its actions did not violate the FLSA. Additionally, if the employee proves the violation was wilful, the statute of limitations period extends beyond the standard two years to a third year. In the largest category of damages, workers are also

often entitled to recover their attorney's fees if they prevail.

1.2 Employment Contracts

Texas is an "at will" employment state, which means that – in the absence of an agreement otherwise – either party can end the relationship at any time, with or without notice. Employment contracts are not required except in the case of collective bargaining agreements with unionised employees. However, employment contracts may be entered into if desired between the employee and employer, and the contract should be in writing.

What an employment contract includes is customizable, and there are no required terms. If the intention of the employer is to limit how the parties can end the employment relationship, this should be carefully drafted with defined terms and specification of when the relationship can be terminated upon notice and without notice, and what the repercussions of the termination will be. It is also recommended that the agreement includes a carefully drafted outline of the employee's compensation plan (including bonuses, equity and commissions, if applicable) and states whether the employer can change that compensation plan proactively without entering into a new agreement.

When an employer does choose to enter into an employment agreement that sets out a specific term of employment, and under what circumstances the employee and employer can end the relationship, this is typically referred to as termination "for cause". In such situations, it is not uncommon for disputes to arise concerning:

- whether proper cause was present to end the employment;
- whether the terminating party followed all the requisite steps to terminate the employment;
- whether any severance is required; and
- how the termination affects the employer's obligation to pay out bonuses and commissions or to implement their equity agreements.

These disputes are highly variable depending on the contract language, including the remedies set out

in the agreement. The main remedy is typically the “benefit of the bargain” or what the party would have received had the breach not occurred. Additionally, in some situations, the prevailing party will be entitled to their attorney’s fees incurred.

Contractual disputes can also arise when the employee’s employment contract sets out how they will be paid (salary, bonuses, equity options, etc) but the compensation is not paid according to the contract provisions. Contractual disputes regarding pay also typically arise when an at-will employee has a commission agreement and disputes that their commissions have been calculated and paid correctly under the contract.

1.3 Working Hours

Texas employees can work full time (typically 35–40 hours a week) or part time (typically 30 or less hours a week). An employee’s status as part-time or full-time is determined by the hours worked, not by agreement.

Texas requires employers to pay overtime to a non-exempt (full-time or part-time) employee who works more than 40 hours in a single working week. However, Texas does not set a maximum of total hours allowed, so potential overtime earnings can be significant. Exempt employees are generally full-time, are not entitled to overtime pay and have no limit on hours worked in a week.

Although generally Texas does not have a maximum of daily hours worked for exempt or non-exempt employees, certain exceptions apply in safety-sensitive industries such as nursing and for truck drivers.

1.4 Compensation

Both Texas and federal US law require Texas employers to pay the federal minimum wage, which is currently USD7.25. Texas presently sets its minimum wage based on the applicable federal rate. Thus, if the federal rate increases, the Texas minimum wage rate would also increase.

Cities are permitted to require that employers pay employees who work within city limits a higher minimum wage. By way of example, the city of Austin,

Texas requires a USD15 minimum wage for employees who work within Austin, Texas.

Employees can also be paid on a salary basis, which is when an employee is paid the same amount each week regardless of hours worked. Both hourly and salary employees can earn bonuses if offered by their employers, but bonuses are not required. If a bonus plan is enacted, it is important to define when the bonus is earned, how it is calculated and how the employee’s separation from employment will affect whether the bonus will be paid.

1.5 Other Employment Terms

Paid Leave and Time Off

Texas does not require employers to provide any paid leaves of absence, including maternity, disability, family, medical or sick leave. However, there are several laws requiring Texas employers to provide unpaid leave for certain reasons, including for disabilities and serious health conditions, and to care for newborn or adopted babies.

Additionally, many Texas employees provide paid leaves to attract and retain employees. Providing paid time off (vacation and sick leave) for full-time employees is generally expected of Texas employers. If paid time off is provided to employees, Texas does not require an employer pay out accrued but unused paid time off at the time an employee resigns or is terminated, unless the employer has a policy stating it will – or the employee has – an agreement stating such pay is owed.

Limits on Confidentiality and Non-Disparagement Clauses

The US Congress also passed the Speak Out Act, which became effective on 7 December 2022. In the event of allegations of sexual assault and/or sexual harassment, any related non-disclosure and non-disparagement clauses entered into “before the dispute arises” are rendered unenforceable under this law. This means that, unless a dispute related to sexual harassment or sexual assault is being resolved by virtue of a settlement containing confidentiality and non-disparagement language, broad-sweeping confidentiality and non-disparagement language in other agreements may not be enforceable. This could

impact multiple standard agreements, including typical non-disclosure agreements and severance agreements. Those templates should be examined for compliance with these new laws.

Texas passed sweeping legislation (effective as of September 2021) imposing more stringent sexual harassment laws on employers in the state. Key changes under the law include:

- additional time for employees to bring claims
- expanded coverage to any company with one or more employees (previously 15 or more employees);
- personal liability for supervisors or managers or anyone else acting directly in the interests of the employer; and
- liability if the employer fails to act “immediately” once the employer or its agents knew (or should have known) about the harassment.

Please refer to **6.2 Employee Representative Bodies** and **7.4 Termination Agreements** for other limitations on non-disparagement and confidentiality clauses set out by the National Labor Relations Board (NRLB).

2. Restrictive Covenants

2.1 Non-Competes

In Texas, non-competes are governed by Section 15.50 of the Texas Business and Commerce Code. Under this provision, a covenant not to compete is enforceable if:

- it is ancillary to or part of an otherwise-enforceable agreement at the time the agreement is made;
- it contains limitations as to the time, geographical area and scope of activity to be restrained; and
- the limitations are reasonable and do not impose a greater restraint than is necessary to protect the goodwill or other business interest of the company.

Typically, the payment of money cannot form the consideration for a non-compete agreement. It must have some special, unique consideration, such as access to confidential information, specialised training, investment of the company’s business goodwill or equity.

Enforcement

In enforcement actions, courts scrutinise the reasonableness of the time, geography and scope of the activity prohibited in relation to the business interests the company is trying to protect. By way of example, if a salesperson was assigned the Dallas, Fort Worth market as their sales territory, then a non-compete preventing the salesperson from working in Houston would likely be found to be over-broad. However, if a salesperson was assigned all of Texas as their market (and did in fact market and converse with customers across the state), then a non-compete preventing the salesperson from working anywhere in the state would likely be upheld as reasonable. Non-competes should be tailored to the job the employee is performing for the company and the relevant business interests the company is trying to protect.

The damages typically available to a business enforcing a non-compete include injunctive relief and lost profits that result from the breach. Most non-compete cases focus on enjoining the conduct at issue to protect the business.

Reformation

If a court finds that a non-compete is over-broad then it must reform and narrow the agreement to make it enforceable. This is called “blue pencilling”. However, if the court has to blue pencil the non-compete, then the party seeking to enforce the non-compete may not recover money damages and is limited to injunctive relief.

Additionally, if the court finds that the business knows at the time it imposed the non-compete that it was more broad than necessary to protect its business interests, then the court may award the employee their costs and reasonable attorney’s fees incurred in defending the action to enforce the non-compete.

Physicians

Special rules apply to non-competes governing physicians in the State of Texas, as well as dentists, professional and vocational nurses, and physician assistants (hereinafter referred to as “medical professionals”). A covenant not to compete relating to the practice of medicine by medical professionals is only enforceable

against a licensed physician if the covenant complies with all the following requirements.

- The non-compete may not deny the physician access to the list of patients whom the medical professional saw or treated within the year immediately preceding termination of the contract or employment.
- The non-compete must provide access to medical records of the medical professional's patients upon authorisation from the patients.
- The non-compete must provide that patient lists or medical records can be provided in the format in which they are normally maintained, unless the parties agree otherwise.
- The non-compete must provide for a buyout of the covenant by the physician. The buyout is capped at the medical professional's total annual salary and wages at the time of termination of the contract or employment.
- The non-compete must provide that the medical provider will not be prohibited from providing continuing care and treatment to a specific patient or patients during the course of an acute illness even after the contract or employment has been terminated.

A non-compete for medical professionals cannot last for more than one year starting from the date the contract or employment was terminated, and cannot cover more than a five-mile radius from the location at which the medical provider primarily practiced prior to the termination.

Sale of a Business

Although outside the scope of this employment-related article, it is important to note that non-competes in the context of a sale of business are given much greater deference in Texas. These non-competes are allowed to be much broader than non-competes in the employment context.

Possible Nationwide Ban on Non-Competes

A current federal regulation issued by the Federal Trade Commission (FTC) seeks to ban all non-competes in the employer–employee context. Lawsuits have been filed to block the ban and, in August 2024, a Texas judge blocked the FTC rule, which went into effect on

4 September 2024. The ruling will be appealed and work its way through the appellate courts. If the regulation goes into effect, nearly all non-competes across the USA in the employer–employee context will be invalidated. Practitioners should follow this litigation closely before advising clients on non-compete matters at the state level.

Further information on the prospective ban on non-competes can be found in the [USA – Texas Trends and Development](#) chapter in this guide – in which non-competes are discussed in more detail.

2.2 Non-Solicits

Non-solicitation agreements are often referred to as non-competes, but the two are not synonymous. Whereas a non-compete prohibits an employee from working elsewhere (within certain temporal, geographic and industry limitations), a non-solicit allows the employee to work anywhere but prohibits the employee from soliciting certain categories of people – typically the people they worked with during their employment (including employees, vendors, contractors, customers and investors).

In Texas, non-solicits are treated very similarly to non-competes in terms of enforcement. They must be reasonable in time, geography and scope and narrowly tailored to protect the business interest at issue. Practitioners should tie the non-solicit to the relationships at risk that they are trying to protect. By way of example, the non-solicit could prevent a departing employee from taking their team with them – although a court may not enforce a non-solicit that prohibits the hiring of any person who works for the company, even if they never spoke to or interacted with the departing employee. Such a broad non-solicit could run afoul of antitrust rules.

There is a growing trend in Texas and many other states to remove non-competes from agreements and rely on non-solicits to protect the applicable business interest. In other words, the employee can go work wherever they want, but they cannot solicit the company's employees, customers, etc.

Non-solicitation agreements are not subject to the FTC ban on non-competes (see **2.1 Non-Competes**),

which is set to take effect on 4 September 2024 if it is not enjoined. For further details on this ban and on non-solicitation agreements in Texas, please see the [USA – Texas Trends and Development](#) chapter in this guide.

3. Data Privacy

3.1 Data Privacy Law and Employment

The biggest privacy issue facing companies is the intermingling between the personal and professional lives of workers caused by the drastic rise in consistent remote work. Prior to 2020, remote work was not unheard of; however, it was not the norm it is presently. Accordingly, there are both worker-specific and business-specific considerations to which companies must pay attention.

From the worker end, companies must make sure that none of their monitoring equipment or systems unlawfully intrude on the worker's right to privacy. That level of privacy varies by state. In Texas, employers should adopt policies making it clear that the employee has no right to privacy on company equipment or systems, including phone, email, chat and voicemail.

From the company end, businesses must require and enforce adequate protections to ensure their confidential information and any trade secret material does not become compromised (either by accident or intent). This requires heightened attention to information security and meticulous enforcement of policies and practices for remote workers or those who regularly deal with such information outside of the confines of a business' physical premises.

4. Foreign Workers

4.1 Limitations on Foreign Workers

Foreign (ie, non-US) workers looking to work in Texas are required to have some form of authorisation, which typically comes in the form of a work visa. There is a waiting list of more than a year for visa interviews in some countries. The USA is still feeling the effects of the COVID-19 pandemic-era state department shutdowns, and this is expected to continue to be felt for

the foreseeable future. Thus, employers must allow for a delay in the application process when arranging for their foreign workforce to start employment in the USA.

Additionally, many H-1B workers have taken advantage of the work-from-home opportunities in the past few years and have relocated to areas outside their approved H-1B locations without filing amendments to their H-1B petitions. This causes a change of status for employees and impacts the renewal of visas, requiring the employees to return to their previous country. Identifying and remedying these issues far in advance of the renewal process may alleviate complications.

4.2 Registration Requirements for Foreign Workers

Apart from the application process with the United States Citizenship and Immigration Services (USCIS) for the applicable employment-based visa, the USA and Texas do not have requirements to register foreign workers.

5. New Work

5.1 Mobile Work

As the world continues to adapt after the pandemic and with new generations entering the workforce and management, remote or hybrid work is the expectation and norm in some industries. Although there are many benefits to remote work, certain legal issues that were not commonplace before have arisen during the past few years.

Accurate Logging of Hours by Remote Workers

As discussed in **1.3 Working Hours**, employers in Texas must track their hourly non-exempt employees' hours and pay them the proper wages, including overtime. Tracking hours can be challenging in a remote work setting, with employees having more freedom to multi-task work and non-work activities. Employers should establish policies regarding tracking and reporting hours and may want to implement software to monitor work hours if productivity seems to have dipped compared to hours worked. If soft-

ware is implemented, employers should give notice to employees.

Duty of Employers to Ensure Safety of Remote Workers

It is an employer's duty to provide a safe work environment for their employees. But what if the work environment is now the employee's home or a shared office space? Employers should implement policies regarding locations for work, including policies that prohibit conducting work calls, meetings or emails while operating a vehicle or conducting non-work activities (eg, taking a work call while hiking). Additionally, employers may evaluate providing equipment that would prevent certain ergonomic issues.

Duty of Remote Workers to Report Any Change of Address

Remote workers sometimes do not see the importance of updating their employer as to where exactly they are working from. Although it may not matter if an employee works remote temporarily while visiting another state, there has been a sharp increase in government agencies finding that employers failed to register to do business in the proper state and did not pay the proper employment taxes because an employee moved to a state other than that which the employer had accounted for. This can also cause issues in workers' compensation, unemployment insurance and other programmes run on the state level. Thus, it is important to have remote workers update or confirm their address on a biannual basis and have a policy that the employer must approve any move outside their current city by remote employees. Even an employee moving cities within the same state can have a detrimental impact – for example, a minimum-wage employee moving from Dallas, Texas (where the minimum wage is USD7.25 per hour) to Austin, Texas (where it is USD15 per hour) would not earn the applicable minimum wage as a result.

5.2 Sabbaticals

It is very uncommon in Texas for employers to have a sabbatical leave policy, except for some governmental employers. Rather, Texas employers are only required to provide unpaid leave for certain reasons, including for disabilities and serious health conditions, and to care for newborn or adopted babies. Employers are

given the option to approve leaves that do not fall under these laws, which some employers have opted for. In that instance, employers should have a carefully drafted leave policy that is uniformly applied to all employees so as to avoid claims of discrimination.

If an employee does take an extended leave of absence from work, without an agreement or policy otherwise, the employer has no obligation to return that employee to their position at the end of such leave. Additionally, employers would not be required to maintain certain benefits during the employee's absence.

5.3 Other New Manifestations

New work is a social concept that focuses on creating an environment where employees work to live rather than live to work. New work encompasses innovative approaches to work that address changing technologies, organisational structures and employee expectations. Recent manifestations in this field reflect a shift towards more flexible, collaborative and technology-driven work environments.

The goals of new work initiatives are to:

- increase job satisfaction;
- improve quality of life;
- improve productivity;
- increase engagement levels;
- establish better working relationships with colleagues;
- provide more time for leisure and self-care activities outside work hours; and
- give better accessibility for neurodivergent employees.

Most recently, new work combines modern practices such as:

- flexible and remote work;
- desk sharing or unconventional office spaces; and
- flat hierarchies.

While most people understand flexible and remote work as it is, advances in virtual and augmented technologies to explore remote collaboration and training are expected. In other words, remote work may not

feel so remote if employees can attend a virtual reality meeting with their colleagues.

Some cities and industries in Texas have embraced new work set-ups, while others show no signs of embracing the new trends. For those that are moving in the “new work” direction, it will be necessary to still maintain clear expectations of productivity, work quality and standards of conduct. These details can get lost in the shuffle of new work arrangements, which will make documenting working hours and disciplining employees for not meeting expectations difficult.

6. Collective Relations

6.1 Unions

Unions in the USA surged during the Second Industrial Revolution in the late 1800s and early 1900s. However, in the 1970s and 1980s, the USA experienced the age of computers and a Presidential administration (under Ronald Reagan) that was largely anti-union. Between 1975 and 1985, union membership fell by five million. By the end of the 1980s, less than 17% of American workers were unionised. Until recently, unions were traditionally thought of as being only for the public sector or certain industries (eg, the airline, transit and automotive industries).

The current union activity in the USA is in markets and industries that have not traditionally been unionised – in particular, retail and hospitality. Recently, more than 200 Starbucks stores officially voted to unionise, according to the NLRB. First-ever unions have also been formed at an Apple Store in Maryland, Trader Joe’s grocery store and the national retailer REI. What differentiates this union activity from previous union activity is that it is concentrated among young workers and sometimes college-educated young workers who feel over-worked, under-paid and over-educated for the jobs they have. Many have decided to band together to demand more. According to Gallup data from 2021, there is a 77% approval rate for unions among young adults aged 18 to 34.

Generally, the top reasons employees cite for joining a union are:

- “the company ignores my complaints and does not care about me”;
- “my boss does not respect me”;
- “the company does not care about safety”;
- “I do not like my pay or benefits” or “I do not understand how pay and benefits are calculated and awarded”; and
- “my boss plays favourites, and I am not treated fairly”.

What the USA experienced immediately after the pandemic had not been seen for decades, or maybe ever – employees are asking for more and they are, in many respects, controlling the market. This has tapered off a bit as experts predict a US recession; however, in the meantime, there has been a large resurgence of unions. Companies need to be aware of these issues and make sure that they are being addressed in the workplace. Even in states such as Texas that are largely anti-union, union organisation is growing in popularity.

6.2 Employee Representative Bodies

The National Labor Relations Act (NLRA) was passed by Congress in 1935 to encourage collective bargaining by protecting workers’ full freedom of association. Although many have viewed the NLRA as antiquated because it protects union activity and organising efforts, there has been more NLRB activity with the new surge of organising efforts in the USA.

Even outside a unionised workforce, the NLRB safeguards employees’ right to engage in protected concerted activity. This means that discussions or comments regarding wages, hours, working conditions or other terms and conditions of employment by more than one employee – or by someone speaking on behalf of others – cannot be restricted and are protected under the NLRA. The NLRB has cracked down on company social media policies in recent years where these policies appear to restrict protected concerted activity by employees on social media.

In McLaren Macomb, Case 07-CA-263041, the NLRB ruled that an employer cannot demand that a laid-

off employee refrain from publicly disparaging the company or otherwise keep confidential the terms of the employee's severance as part of a severance agreement. The NLRB decision overruled decisions of the board issued just a few years prior. Under the Biden administration, the NLRB reversed course and found that an employer's use of severance agreements that contain sweeping non-disparagement and confidentiality provisions interferes with a laid-off employee's Section 7 rights. However, since Donald Trump became President, the Acting General Counsel of the NLRB rescinded this decision. Thus, employers using severance agreements with confidentiality and non-disparagement clauses may no longer use the carve out language, carving out conduct protected by Section 7 of the NLRA, if they so choose.

Companies from overseas expanding into the US market should be aware of these NLRA regulations and ensure that their policies – especially policies that might limit employees' ability to discuss wages and other terms of employment – are not restricted.

6.3 Collective Bargaining Agreements

Collective bargaining agreements are agreements between employers and representatives of their employees (eg, unions), which address the wages, hours and other conditions of employment.

Collective bargaining agreements exist and operate under the statutory framework established by the NLRA. Most collective bargaining agreements contain the following common elements:

- union recognition clause;
- management rights clause;
- union rights provisions;
- prohibits on strikes and lockouts;
- union security clause;
- non-discrimination provisions;
- grievance and arbitration procedures;
- provisions establishing the terms and conditions of employment;
- provisions addressing changes in the employer's business; and
- terms defining the scope of the agreement.

A collective bargaining agreement will typically require "just cause" (as defined in the agreement) for an employer to terminate employment. If the employee disputes that the employer had just cause, this will likely proceed under the grievance procedures until a determination is finalised.

7. Termination

7.1 Grounds for Termination

At-Will Employment

When facing termination of the employment relationship, companies should look to determine whether the employee is party to any employment contract or collective bargaining agreement that governs the termination or the employment relationship itself. The default rule in 49 states (including Texas) is that employees are "at will", meaning the employee or the business can terminate the employment relationship for any reason or no reason at all, so long as the reason or no reason is not "illegal" – something that is typically tied to a protected classification.

Employment Contracts and Collective Bargaining Agreements

If there is an employment contract, the business must determine what steps – if any – are needed to end the relationship. By way of example, some employment contracts may require a severance payment or certain notice if the employee is terminated without cause (which should be defined in the agreement). A collective bargaining agreement will typically require "just cause" (as defined in the agreement) for an employer to terminate employment.

Best Practices to Minimise Risk

Assuming there is no contractual relationship or collective bargaining agreement with the employee that governs the termination, the employer should still ensure it has legitimate business reasons for the termination and no decision is tied to a protected classification or in response to a workplace complaint. If a protected classification listed in **7.5 Protected Categories of Employee** is motivating the termination, liability could be found against the employer. There are many state and federal statutes that protect against

discrimination, harassment and retaliation, which employers should heed.

The best defence against such a claim is to ensure that the employer documents important events during the entire employment relationship, such as discipline given, performance issues, absences/tardies and verbal counselling provided. In Texas, there is no requirement that businesses use progressive discipline to coach an employee, but it can serve as a valuable legal defence against any claim of unlawful action.

Additionally, having clear and concise policies and guidelines (often found in an employee handbook) – in addition to appropriate non-disclosure and confidentiality agreements for private information – will help establish the rules and framework that will govern the employment relationship. Pay and position adjustments during the employee's tenure, as well as performance reviews, should likewise be documented. Perhaps the most significant defence to employment claims concerns the real-time documentation of performance or conduct issues of employees. Many employers opt to implement progressive discipline policies, which typically (albeit not in all cases) require levels of warning or addressing the performance or conduct issue before an ultimate termination.

7.2 Notice Periods

In the absence of an employment contract, notice is not required for either an employee or employer to terminate the relationship. For employers who wish to get the “professionally courteous” two-week notice from their employees, the employer could pay out accrued and unused paid time off if the notice is given and worked or provide some other type of incentive. However, an employer cannot withhold any pay for hours or days already worked if an employee does not provide any notice of the decision to leave their employment.

7.3 Dismissal for (Serious) Cause

As discussed in 7.1 **Grounds for Termination**, Texas does not require an employer to follow a progressive discipline policy. Accordingly, an employer can terminate the employment relationship for any reason or no reason at all, so long as the reason or no reason

is not “illegal” – something that is typically tied to a protected classification.

However, an immediate termination can be viewed as a violation of anti-discrimination or anti-retaliation laws if the employer is not consistent in treating the preceding offence as grounds for immediate termination. By way of example, if one employee is terminated on the spot for workplace violence but another employee engaged in substantially similar violence and was not terminated a few months prior, the terminated employee may have grounds to claim discrimination. Accordingly, it is imperative that an employer is consistent in how it applies its discipline and termination policies, especially in the case of an immediate termination.

7.4 Termination Agreements

Severance agreements are frequently used by Texas employers to obtain a release of any claims the employee may have against the employer. Severance agreements must follow the typical contract rules, such as having consideration (the severance payment), being in writing and being agreed to (the signature).

Limitations to Severance Agreement

There are certain claims that cannot be released in a severance agreement, such as the employee's right to:

- be paid for hours worked or business expenses incurred prior to the termination;
- bring an administrative charge;
- file for unemployment benefits; or
- file for workers' compensation benefits.

Additionally, the NLRB has instructed that any confidentiality and non-disparagement clause in a severance agreement must be narrowly tailored and provide appropriate language to carve out conduct protected by Section 7 of the NLRA.

Employees Over Age 40

If the severance agreement is for an employee who is over the age of 40 by the time they are presented with the severance agreement, the employer must ensure that the severance complies with the Older Workers Benefit Protection Act. This includes:

- ensuring the agreement is clear and understandable;
- ensuring the agreement refers to the Age Discrimination in Employment Act and the employee's right to waive their claims under it;
- advising the employee to consult with a lawyer before signing; and
- providing at least 21 days (45 days if a group termination) before signing and seven days to revoke their signature after signing.

If it is a group termination, employers must provide employees over the age of 40 included in the group termination with information about the factors that determine eligibility, the ages and job titles of employees who were laid off, and the ages and job titles of employees who were not laid off.

7.5 Protected Categories of Employee

Applicants, employees and former employees are protected from employment discrimination based on:

- race;
- colour;
- religion;
- sex (including pregnancy, sexual orientation or gender identity);
- national origin;
- age (40 or older);
- disability; and
- genetic information (including family medical history).

Such protected classification cannot be used when determining any term or condition of employment, including hiring, promotion, pay rate and termination.

Texas law provides that if the same person that hired the employee is the decision-maker with regard to the termination, there is a presumption that no discrimination occurred – the reasoning being that the choice to hire the person shows no animus towards their protected class. Of course, this presumption would not apply if the employee's inclusion in a protected category begins while in employment, such as becoming pregnant, turning 40, or developing a disability.

In recent years, there has been an increase in claims alleging “reverse discrimination” filed by non-minority employees, claiming a minority group or employee is getting preferential treatment and that the non-minority is thereby being discriminated against. Thus, it is critical for an employer to ensure that its policies with regard to hiring, promotion, pay rates, discipline and terminations are applied in a consistent manner without regard for such protected classes.

8. Disputes

8.1 Wrongful Dismissal

Wrongful termination claims are typically split into two groups:

- wrongful termination in breach of an employment agreement that limits the employer's ability to dismiss the employee except for certain reasons; or
- wrongfully dismissing an employee for an unlawful reason, such as discrimination or retaliation.

Contractual Claims

When an employer chooses to enter into an employment agreement that sets out a specific term of employment and the circumstances under which the employee and employer can end the relationship, dismissal is typically referred to as termination “for cause”. In such situations, disputes arise concerning:

- whether proper cause was present to end the employment;
- whether the terminating party followed all the requisite steps to terminate the employment; and/or
- whether any severance is required.

These disputes are highly variable depending on the contract language, including the remedies set out in the agreement. The main remedy is typically the “benefit of the bargain”, or what the party would have received had the breach not occurred. Additionally, in some situations, the prevailing party will be entitled to their attorney's fees incurred.

Discrimination and Retaliation

Unlike contractual reasons, most employees in Texas have the right to not be terminated from their employ-

ment for discriminatory or retaliatory reasons. The details of a discrimination claim are outlined in **8.2 Anti-discrimination**.

For retaliation, an employer is prohibited from terminating an employee because the employee opposed an unlawful employment practice or made a charge, testified in or assisted in an investigation into an unlawful employment practice. This is referred to as “protected activity”. However, not all employment complaints are protected activities that give rise to a retaliation claim. Rather, the complaint, charge or opposition must be about an action that the employee reasonably believed violated an employment law. By way of example:

- if an employee reports to HR that they believe they did not receive a promotion because of their race, and points to instances of disparate treatment leading up to the promotion, this would likely qualify as protected activity because such alleged discrimination would be unlawful; but
- if an employee complains to their boss that a colleague called them a curse word but does not relate the curse word to the employees’ protected class, this would likely not qualify as protected activity because it is not unlawful for a colleague to be rude.

After showing they engaged in protected activity, the employee must also show that – “but for” the protected activity – they would not have been terminated.

If an employee is successful in proving retaliation, the employee can recover:

- the wages and value of benefits the employee would have earned if not for the retaliation;
- mental anguish damages;
- attorney’s fees; and
- punitive damages if the employee can show the discrimination was intentional and malicious.

8.2 Anti-Discrimination

Applicants, employees and former employees are protected from employment discrimination based on race, colour, religion, sex (including pregnancy, sexual orientation or gender identity), national origin, age (40

or older), disability and genetic information (including family medical history).

For each type of discrimination, the employee must prove a different set of elements. However, most require the employee to show:

- that the employee is in one of the protected classes;
- that the employee was qualified for the job they had or applied for;
- that they experienced an adverse employment action (eg, termination, suspension without pay or severe harassment); and
- that the adverse employment action was due to their protected class.

Once the employee shows this, the employer must be able to articulate a legitimate, non-discriminatory reason for the adverse employment action. If able to do so, the burden shifts back on to the employee to prove that the adverse employment action was in fact due to the employee being in the protected class and not only due to legitimate, non-discriminatory reasons.

If an employee is successful in proving discrimination, the employee can recover:

- the wages and value of benefits the employee would have earned if not for the adverse employment action;
- mental anguish damages;
- attorney’s fees; and
- punitive damages if the employee can show the discrimination was intentional and malicious.

8.3 Digitalisation

Since the pandemic, the manner in which employment disputes play out in Texas has remained almost unchanged. Although Texas courts may entertain certain preliminary hearings via video conference, most are requiring all hearings and proceedings to be conducted in person, including the final trial. Even in arbitration, discussed further in **9.2 Alternative Dispute Resolution**, arbitrators are requiring final hearings to be conducted in person. However, courts and arbitrators alike are increasingly approving certain out-of-town witnesses to testify remotely by video con-

ference, and jurors are more open to receiving such testimony.

One aspect of employment litigation that there has not been a quick return to in person is the pre-hearing mediations conducted. Mediation is the parties' chance to have settlement discussions with a third-party neutral who assists in the negotiations. Prior to the pandemic, mediations typically occurred in the mediator's office, and both parties travelled in for the meeting. However, mediations have largely remained remote, with both parties conferencing via video. In fact, some mediators have chosen to only offer remote proceedings. This is beneficial in keeping the cost of mediation down and being more efficient, but some larger disputes may warrant an in-person mediation in order to conduct the necessary negotiations.

9. Dispute Resolution

9.1 Litigation

In Texas, as in other states, a class action is a legal procedure that allows one individual or more to sue on behalf of a larger group of individuals who have similar claims. For employment claims, this could involve issues such as wage and hour violations, discrimination or wrongful termination.

Eligibility for a Class Action

To proceed with a class action, the claim must meet certain criteria, as follows:

- numerosity – the class must be so large that individual lawsuits would be impractical;
- commonality – there must be common legal or factual issues that affect all class members;
- typicality – the claims or defences of the representative parties must be typical of the claims or defences of the class; and
- adequacy – the representative parties must fairly and adequately protect the interests of the class.

Filing a Class Action

The procedure for filing a class action is as follows.

- Complaint – the process begins when a plaintiff (or a group of plaintiffs) files a complaint in court, outlining the claims against the employer.
- Certification – the court must certify the class before it can proceed as a class action. This involves a hearing where the judge will evaluate whether the case meets the requirements for class action status discussed in the foregoing.
- Notice – once the class is certified, notice is generally sent to all potential class members, informing them of the class action and their rights.

Types of Employment Claims Suitable for Class Actions

Common employment issues that might be addressed in a class action include:

- wage and hour claims – allegations of unpaid overtime, misclassification of employees as exempt or other wage violation;
- discrimination – claims of systemic discrimination based on race, gender, age, disability or other protected characteristics; and
- unlawful termination – cases where multiple employees claim they were wrongfully terminated under similar circumstances.

In class actions, it is crucial to have experienced legal representation. Attorneys specialising in employment law and class actions can help navigate the complexities of the case, including certification, litigation and settlement negotiations.

9.2 Alternative Dispute Resolution

With a well-written agreement, most Texas courts are quick to enforce an arbitration agreement signed by the employee. If the employee signs electronically, it is important to provide the agreement in a secure fashion and save certain signature authorisation data from the e-signature. These agreements are typically entered into as part of the employee's hiring paperwork and can apply to any future claim arising from the employee's employment, with the exception of certain claims (eg, sexual harassment claims and workers' compensation claims).

At the federal level, the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021

(EFAA) came into effect on 3 March 2022. Under this law, an employer cannot mandate forced (confidential) arbitration of claims related to sexual harassment and sexual assault. It also renders class action waivers of sexual harassment and sexual assault claims unenforceable.

If the agreement includes a provision that requires mediation prior to filing a lawsuit or arbitration, this will also typically be enforced by Texas courts.

9.3 Costs

Under applicable Texas and federal law, employees are entitled to their attorney's fees and costs if they prevail on claims of discrimination, harassment and retaliation, hostile work environment claims, or claims that they were not paid the proper overtime or minimum wage. However, employers who successfully defend against such claims typically have no claim for their fees unless they can show that the employee brought it in bad faith, which Texas courts have held to be a very high – nearly impossible – standard.

Employees are also entitled to their attorney's fees and costs if they are successful on a breach of contract claim, which typically arises when an employee claims they were not paid properly under their employment contract before or after termination. In these cases, if an employer successfully defends itself, it can typically recover attorney's fees.

Trends and Developments

Contributed by:

Sydney Shimkus

Bell Nunnally & Martin

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Recent Trends and Changes in Employment Law Following President Trump Taking Office: What Employers Need to Know

Since President Donald Trump assumed office in January 2025, various government entities, court rulings and state leaders have made conservative-trending decisions and rulings on labour and employment matters. Below are several areas where these trends are apparent as well as outliers that employers need to be aware of.

Acting general counsel of the National Labor Relations Board (NLRB) rescinds several NLRB memoranda

On 27 January 2025, President Trump removed the general counsel of the NLRB, Jennifer Abruzzo, and board member Gwynne Wilcox, from their positions with the board. Abruzzo's removal from her position was expected, but Wilcox's dismissal marks the first time in the NLRB's history that a President has removed a board member from office.

Additionally, on 3 February 2025, William B Cowen was appointed acting general counsel of the NLRB. Cowen wasted no time in driving policy change, and on 14 February, he issued Memorandum 25-05, rescinding several memoranda issued by his predecessor on matters involving non-compete agreements, confidentiality clauses in settlement agreements and electronic monitoring of employees, among others. Cowen indicated he will publish new guidance on these hot topics or will abandon the former decisions altogether; however, he has not made any further decisions to date.

Abruzzo was appointed NLRB general counsel by former President Joseph R Biden in July 2021 and was set to serve a four-year term expiring in July 2025. Abruzzo's removal was expected, as President Biden had previously fired her Trump-appointed predecessor Peter Robb.

Gwynne Wilcox served as one of the five members of the board. Wilcox was nominated by former President Biden, and confirmed by the US Senate, to serve on the board in 2021. In 2023, she was again nominated and confirmed for a second term, set to expire in August 2028.

Unlike Abruzzo, Wilcox's removal was unanticipated. While federal courts have affirmed the President's ability to remove the NLRB's general counsel, this is the first time since the passage of the National Labor Relations Act (NLRA) in 1935 that a president has removed a board member. Following her removal, Wilcox was quick to indicate that she will be pursuing legal challenges to her termination, leaving open the possibility that the move could be overturned.

As mentioned above, Abruzzo's successor, acting general counsel Cowen, has rescinded several NLRB memoranda on significant issues in the labour and employment law field. In further detail, some noteworthy rescissions include the following.

- Non-competes:
 - (a) GC 23-08 – generally found that noncompete agreements violate the NLRA; and
 - (b) GC 25-01 – “stay-or-pay” provisions, where an employee is required to pay their employer if they separate employment and violate an employee's Section 7 rights under the NLRA.
- Settlement agreements:
 - (a) GC 23-05 – precluded severance agreements where employees broadly waived their rights and broad non-disparagement and confidentiality clauses in severance agreements were unlawful.
- Electronic monitoring of employees:
 - (a) GC 23-02 – protected against an employer's use of intrusive artificial intelligence, algorithm-based decision-making and surveillance of concerted activity during break times and in non-work areas.

With these rescissions, in Texas, employers can generally continue to enforce reasonable non-compete agreements (specific considerations for employees in the healthcare industry are expanded upon below) to include non-disparagement and confidentiality clauses in severance agreements, and can continue to conduct surveillance of employees for reasonable business purposes.

The United States Supreme Court and other courts accept reverse discrimination claims

Ruling

On 5 June 2025, the US Supreme Court, in a unanimous decision (*Ames v Ohio Department of Youth Services* No 23-1039), found that majority-group plaintiffs in reverse discrimination cases need not meet the additional background circumstances test, resolving a circuit split on the issue.

Background

The plaintiff in the case, Marlean Ames, is a heterosexual woman and employee of the Ohio Department of Youth Services who had worked in a variety of positions for the department for over 20 years. In 2019, Ames applied for a newly created management position in the department's Office of Quality and Improvement. Ames alleged that she was qualified for the position and had proven herself as such during her lengthy tenure with the organisation. Despite these factors, she asserted the department hired another candidate, a lesbian woman, to fill the role. Ames said that a few days after she interviewed for the position, her supervisors removed her from her role in programme administration and demoted her to executive secretary – a role Ames held when she first joined the department in 2004. Ames alleged her previous role was given to a gay male and filed suit for discrimination on the basis of sex, which includes sexual orientation.

Under Title VII, a plaintiff may claim that their employer acted with “discriminatory motive” when it denies them a hiring opportunity, whether it be a new job position, promotion or compensation decision. That is the case in the US Fifth Circuit Court of Appeals, which governs federal cases in Texas. However, in the US Sixth Circuit Court of Appeals (which includes Ohio), the standard previously required that members of a majority group such as heterosexuals also present evidence of “background circumstances” showing the employer historically discriminates against members of majority groups. The Seventh, Eighth, Tenth and DC Circuits also previously applied the background circumstances test. Without meeting the background circumstances standard, Title VII plaintiffs who were members of majority groups could have their cases dismissed in the pleading stage. Applying this stand-

ard, the Sixth Circuit found that Ames met her burden of proof under the typical Title VII standard, but she, as a straight woman, had not met the heightened burden of background circumstances necessary to show that her employer historically discriminated against members of majority groups; therefore, her discrimination case failed. The US Supreme Court's decision therefore focused on whether the background circumstances test is permissible under Title VII.

In its decision, the Supreme Court first found that Ames had satisfied the requirements of *McDonnell Douglas v Green*, which is longstanding Title VII case law requiring that a discrimination plaintiff present evidence that “she applied for an available position for which she was qualified but was rejected under circumstances which give rise to an inference of unlawful discrimination”. The court then looked at the text of Title VII and found that the Sixth Circuit's background circumstances test was inconsistent with Title VII's purposes. In its analysis, the justices noted that Title VII makes it unlawful “to fail or refuse to hire or discharge any individual or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin”. To the court, it was impactful that the act focuses on individuals, not groups, noting, “that focus is anything but academic”.

The court also highlighted prior Supreme Court decisions such as *Griggs v Duke Power Co.* and *McDonald v Santa Fe Trail Transportation Co.*, which ruled that Title VII prohibits discrimination against both minority and majority groups. Consistent with its previous rulings, the court concluded that “[o]ur case law thus makes clear that the standard for proving disparate treatment under Title VII does not vary based on whether or not the plaintiff is a member of a majority group”. The court struck down the Sixth Circuit's background circumstances test, reasoning, “the background circumstances rule disregards this admonition by uniformly subjecting all majority group plaintiffs to the same, highly specific evidentiary standard in every case”.

The *Ames* case clarified the scope of viable discrimination cases, including for employees of majority groups with protected characteristics under Title VII.

Texas' major modification to its non-compete statute for healthcare providers

While the NLRB has not spoken further on non-compete matter, Texas has acted to clarify the enforceability of non-compete agreements for healthcare providers.

On 20 June 2025, Governor Greg Abbot signed Senate Bill 1318 (SB 1318) into law. The bill amends the Texas Covenants Not to Compete Act (the "Act"), codified at Section 15.50 of the Texas Business & Commerce Code, by placing stricter requirements on the enforceability of non-competes for physicians, and expands those requirements to govern non-competes for dentists, nurses and physician assistants. SB 1318's amendments to the act are set to take effect on 1 September 2025.

SB 1318 is meant to restore the occupational freedom of healthcare providers, honour healthcare providers' responsibility to patients and improve healthcare access. SB 1318's implementation will mean more mobility for healthcare providers in a high-healthcare-demand market while respecting the time and effort healthcare employers put into building patient relationships and marketing their services.

Key Provisions of SB 1318

Important provisions of SB 1318 include the following.

- **Who is covered:** Along with physicians, SB 1318 expands the act's protection to cover dentists, professional and vocational nurses and physician assistants. Excluded from the act's protection are healthcare managers and directors working in an administrative capacity or other healthcare providers not specifically named in the bill.
- **Buyout provision cap:** The buyout provision in a non-compete agreement is capped at the healthcare provider's total annual salary and wages at the time of termination of the contract or employment. This provision replaces the "reasonable price" standard for buyouts and the option to have the buyout amount determined by an arbitrator.

- **Time limit:** The non-compete agreement cannot last for more than one year starting from the date the contract or employment was terminated.
- **Geographic area limit:** The non-compete agreement cannot cover more than a five-mile radius from the location at which the healthcare provider primarily practiced before the provider's contract or employment was terminated.
- **Clear terms:** The terms and conditions of the non-compete agreement must be "clearly and conspicuously" stated in writing in the healthcare provider's contract or employment agreement. Clear and conspicuous language should be free of ambiguous language and be easy for a reasonable person to discover and locate, such as being bolded or capitalised.
- **Involuntary discharge without good cause (physician-only):** A non-compete agreement will be voided and unenforceable against a physician licensed by the Texas Medical Board if the doctor is involuntarily discharged from his or her contract or employment without good cause. SB 1318 defines good cause to mean a reasonable basis for discharge based on a physician's conduct, job performance and contract or employment record.

Steps towards compliance

The amendments to SB 1318 apply only to non-compete agreements entered into or renewed on or after 1 September 2025. Non-compete agreements entered into before then will be governed by the law previously in effect.

Tips for Current Employee Retirement Income Security Act (ERISA) Compliance

ERISA sets minimum standards for establishing, administering, amending and terminating pension benefit plans and welfare benefit plans maintained by most private sector employers. ERISA generally covers retirement income; deferred compensation; medical, sickness and vacation benefits; scholarship funds; and apprenticeships or training programmes.

The statute, and supporting case law, can be daunting, but the following five tips follow recent trends the author has seen to help ensure compliance.

Tip one: employer's response to overfunded/underfunded employee 401 (k) accounts

Retirement plan sponsors need to periodically audit their 401 (k) plans. One of the biggest issues the firm has seen lately is an employer's discovery that an employee's 401 (k) account has been over- or underfunded.

Underfunded employee accounts

In situations where an employee's retirement account is underfunded, the employer should reallocate the balance for the missing period. There is no tax liability for the underfunding, but there is a risk that an employee otherwise paid taxes on money that should have been sheltered in their 401 (k).

Overfunded employee accounts

In situations where an employee's 401 (k) fund has been overfunded, an employee will face a 6% penalty for the overfunded amount. This can be avoided if the employer recovers and redistributes that money before 15 April of the tax year in which the fund was misallocated. If discovery is made after 15 April, then the overfunded portion will need to be retracted, which includes the amounts earned on the excess funding for the calendar year. This should be done immediately to help the employee avoid double taxation, whereby they get taxed on the overfunded portion now, and when they withdraw the funds or otherwise receive a distribution. If possible, the overfunded amount can be allocated to the employee's account in the following year.

Employer response

In both scenarios, the employer will need to issue amended W-2 forms. Likewise, the 401 (k) plan will need to file an amended return to reflect the proper participant allocation.

Finally, even if the overfunding/underfunding issue occurs by the fault of a third-party administrator, the tax and penalty liability will flow to the employer as the benefit plan sponsor. However, the employer should examine whether its third-party administrator has an obligation to indemnify the employer in such situations.

Tip two: ensure your fund manager's actions are without self-interest

ERISA requires benefit plan administrators to manage financial investments as a reasonably prudent business professional, balancing manageable risk with protection of plan assets without self-interest. This is generally accomplished by investing in established investments and investment vehicles with a trusted history of performance.

Commonly, benefit plan managers will outsource fund management to a non-party investment manager and delegate proxy voting authority. Recent trends have raised concern that outsourced benefit plan managers are not always acting without interest, including investing in funds they will benefit from.

To avoid this concern, benefit plan managers should:

- when selecting a manager, conduct a thorough review of a manager's voting record prior to their selection;
- for current managers, confirm they are exercising financial prudence in managing plan assets through arm's length transactions, exercising the highest duty of loyalty to the plan and its participants, and managing assets without any undue influence or conflict of interest; and
- consider passing the voting responsibilities directly to plan participants and their beneficiaries.

Tip three: handling of non-vested employee benefits

There has been an uptick in litigation attacking an employer's use of 401 (k) forfeitures to offset employer contributions. Oftentimes, employers will use non-vested amounts from employees who leave before fully vesting towards employer contribution requirements. This can be seen as a form of self-dealing and a violation of the fiduciary requirements in managing a 401 (k) plan, especially when an employee is making a termination decision and chooses one employee over the other to avoid full vesting – and thus frees funds to allow for contribution towards the employer's requirements.

Tips four and five: medical plan considerations

Coverage decisions for Medicare-eligible workers

Contributed by: Sydney Shimkus, Bell Nunnally & Martin

Employers may not reduce, carve out or eliminate benefits to their Medicare/Medicaid-eligible employees. This includes encouraging employees that are Medicare/Medicaid-eligible to opt out of the employer-provided healthcare plan to transfer to Medicare/Medicaid or a specific bridge to obtain such care. This conduct can be found to violate the Age Discrimination in Employment Act and the Americans with Disabilities Act.

Coverage decisions when an employee has overly high medical expenses

Employers cannot create a separate insurance plan, or carve out, when an employee has overly high medical expenses. When presented with an employee with individual needs, or family needs, for care that exceeds the needs of other employees, employers must still treat this individual equally, providing the same level of care under the employer's medical plan. Treating an employee differently for the employee's elevated needs can also be found to violate the Americans with Disabilities Act (ADA).

ZIMBABWE



Law and Practice

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Wintertons has a labour and employment law team representing clients in a full array of employment-related matters, including ADR, litigation in the Labour and Supreme Courts, drafting and reviewing employment contracts, handbooks, policies, and employment codes of conduct. The team provides guidance

and representation in disciplinary and grievance procedures, collective bargaining negotiations on behalf of employers with unions and employee representatives, retrenchments, wrongful terminations and dismissals, and training management on how to identify and avoid disputes.

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1. Employment Terms

1.1 Employee Status

Zimbabwean law does not utilise the terms “blue-collar” and “white-collar” when classifying workers. There is a distinction between managerial and non-managerial employees, however, which is recognised by statute. Non-managerial employees are generally subject to industry-level collective bargaining agreements (CBAs), whereas managerial employees are rarely subject to CBAs. CBAs regulate the terms and conditions of employment, such as grading, wages, benefits and working hours. They also prescribe the minimum wage that is applicable to each grade.

The term “non-managerial employee” can apply to both blue-collar and white-collar employees – for instance, the non-managerial employees in an agricultural enterprise may comprise general labourers (blue-collar workers) and clerical staff (white-collar workers). Although the distinction is not explicitly recognised at law, the grading system is implicitly aware of the distinction. Unskilled labour is generally placed in the lowest grades with the least pay.

In addition to the distinction between managerial and non-managerial employees, employment contracts are categorised along the lines of:

- whether the contract is for an indefinite period or for a fixed term;
- whether it is seasonal or casual; or
- whether it is for hourly work.

These different types of contracts are discussed in greater detail in **1.2 Employment Contracts**.

1.2 Employment Contracts

The following are the main types of employment contracts.

- Contracts without limit of time – These employment contracts are open-ended and do not have a termination date. They are otherwise referred to as “permanent” contracts.
- Fixed-term contracts – These are employment contracts for a fixed duration (ie, they have a fixed start and end date).

- Contracts for hourly work – These are employment contracts whereby an employee is paid only for the hours that the employee actually works (see **5.3 Other New Manifestations** for further detail).
- Casual work contracts – These are contracts for work for which an employee is engaged for not more than a total of six weeks in any four consecutive months. An example of a casual contract is a contract for off-loading delivery trucks as and when the work is available.
- Seasonal work contracts – These are contracts relating to work that is, owing to the nature of the industry, performed only at certain times of the year. An example of seasonal labour is planting or harvesting crops.
- Apprenticeship contracts – These provide on-the-job training and have a stipulated start and end date.

A contract of employment does not have to be in writing. In terms of Zimbabwean law, oral contracts are valid and enforceable. However, Section 12 (2) of the Labour Act (Chapter 28:01) obliges the employer to inform an employee in writing of the following particulars upon engagement:

- the name and address of the employer;
- the period, if limited, for which the employee is engaged;
- the terms of probation, if any;
- the terms of any employment code;
- the employee’s remuneration, its manner of calculation and the intervals at which it will be paid;
- the hours of work;
- any bonus or incentive production scheme;
- vacation leave and vacation pay; and
- any other benefits provided under the contract of employment.

1.3 Working Hours

Hours of Work

Maximum working hours are generally regulated under the relevant CBA. In the absence of an applicable CBA, the employee should be informed of the ordinary hours of work within the context of Section 12 (2)(g) of the Labour Act, which is referred to in **1.2 Employment Contracts**.

Generally, employees work an eight- or nine-hour day, with shift workers in some industries working up to 12 hours per day. In terms of Section 14C of the Labour Act, an employee must have at least 24 hours of continuous rest per week. Employers may permit their employees to work on a flexitime basis. This is, however, not regulated.

Contracts of employment for part-time workers must stipulate the hours that they are required to work per day, week or month, as well as the applicable remuneration. As mentioned in **1.2 Employment Contracts**, employers and employees may also enter into contracts for hourly work – under the terms of which the employee will be paid only for the hours actually worked (see **5.3 Other New Manifestations** for further detail).

Overtime

Overtime for employees who are subject to a CBA is regulated in terms thereof. In some industries, the employer may compel its employees to work overtime, whereas in others the employer may only ask its employees to do so. Managerial employees are generally not entitled to overtime pay unless the employment contract provides for it.

Overtime pay is usually calculated at a rate that is higher than the ordinary hourly wage – in some cases, it is up to double the regular hourly wage. Employees in some industries may also be compensated for overtime by way of time off corresponding to the overtime worked, calculated at a rate that is generally higher than the actual overtime worked.

1.4 Compensation

Section 20 of the Labour Act empowers the government minister responsible for the administration of the Labour Act to promulgate a statutory instrument specifying minimum wages and benefits for any class of employees in any undertaking or industry.

The Labour (Specification of Minimum Wages) Notice 1996 (Statutory Instrument 70 of 1996) was gazetted in accordance with and to give effect to Section 20 of the Labour Act. In terms thereof, the minister specifies the minimum wage that should be paid to certain groups of employees, with the exception of:

- employees who are subject to a National Employment Council agreement;
- employees in the agricultural sector; and
- domestic workers.

The minimum wage was last reviewed by Statutory Instrument 186 of 2024, which came into effect on 22 November 2024.

In addition to Section 20 of the Labour Act, Section 74 (2) of the same Act allows registered trade unions and registered employer organisations or federations thereof to negotiate and agree on rates of remuneration and minimum wages for different grades and types of occupations. The resultant agreed wages are recorded in industry- or sector-specific CBAs. Those CBAs made under Section 74 of the Labour Act are binding on all employers and employees in the sector or industry to which the agreements relate.

Neither the Labour Act nor the Minimum Wage Regulations make it compulsory for employers to pay a bonus or 13th-month salary. However, some CBAs – such as the CBA for the Banking Undertaking (SI 273/00) – make it compulsory for employers to pay a 13th-month bonus. In all other cases, the entitlement to a bonus is a discretionary matter that is regulated by the terms of the contract between the parties.

1.5 Other Employment Terms

Vacation Leave

Under the terms of Section 14A of the Labour Act, an employee who would have completed their first year of service with an employer is entitled to fully paid vacation leave at the rate of one calendar month per year or two-and-a-half days per month. An employee who has no accrued vacation leave may take unpaid vacation leave.

Special Leave

An employee is entitled to paid special leave not exceeding 12 days per calendar year under the terms of Section 14B of the Labour Act. An employee may be allowed to take special leave for the following reasons:

- certified contact with an infectious disease;

- a subpoena to attend any court in Zimbabwe as a witness;
- to attend as a delegate and office-bearer any meeting of a registered trade union that represents employees within the undertaking or industry in which the employee is employed;
- when detained for questioning by the police;
- the death of a spouse, parent, child or legal dependant; or
- on any justifiable compassionate ground.

Weekly and Public Holiday Rest

Under Section 14C of the Labour Act, an employee is entitled to at least 24 hours of continuous rest per week. An employee is also entitled to a leave of absence on public holidays. If they consent to work on public holidays, they will be entitled to at least double their ordinary daily remuneration rate.

Maternity Leave

Female employees are entitled to fully paid maternity leave for a period of up to 98 days under the terms of Section 18 of the Labour Act. An employee who requires maternity leave that exceeds the prescribed limit may be granted unpaid maternity leave. Zimbabwean law does not provide for paternity leave.

Sick Leave

A sick employee is defined as a person who is prevented from attending duties because of illness or injury, or who is undergoing medical treatment. The illness should be certified by a registered medical practitioner.

Under the terms of Section 14 of the Labour Act, a sick employee is entitled to 90 days of fully paid sick leave per year, as well as a further 90 days of sick leave on half pay. If the medical condition persists thereafter, the employer is entitled to terminate the employment contract by reason of the employee's incapacity.

Confidential Information

There is nothing in the Labour Act that regulates the disclosure of confidential information. This is regulated by the common law, which generally prohibits an employee from disclosing confidential information without authorisation from the employer. Employers

are also at liberty to include a confidentiality clause in their employment contracts.

Non-Disparagement

The Labour Act does not prohibit employees from speaking negatively about the employer, its products or its services. The employee's duties at common law, however, imply a duty to further the employer's best interests and avoid bringing the employer into disrepute. The contract of employment may, at the parties' election, also contain a non-disparagement clause. In addition, some employment codes of conduct make it an offence to say or do anything that brings the employer into disrepute.

An employee who speaks negatively about the employer, its products or its services may – in addition to facing disciplinary action – face a claim for damages. Such a claim would not be subject to any limitation of liability, unless the contract of employment provides otherwise.

2. Restrictive Covenants

2.1 Non-Competes

A non-compete clause is generally enforceable if it is reasonable and not contrary to public policy. A non-compete or restraint of trade clause will usually affirm that the employee accepts that the restraint is reasonable, both in scope and duration.

It is not a legal requirement that restrictive covenants be accompanied by independent consideration for the same. Consequently, employees do not generally receive compensation in return for entering into non-compete agreements with their employers.

An employee who breaches a non-compete clause may be subject to a claim for damages by the employer. The onus of proving the quantum of such damages lies with the employer, unless the quantum of the same is specified in the non-compete clause.

2.2 Non-Solicits

Clauses that prohibit an employee from contacting the employer's customers following the termination of the contract are a common feature of employment

contracts. Non-solicitation clauses in relation to fellow employees are less common.

Non-solicitation clauses are generally enforceable, and – in the event of breach – the employer may make a claim for damages. Such damages may be quantified with reference to the business lost as a result of the breach. The damages may also be liquidated – that is, a certain sum may be stipulated in the contract as comprising the damages due in the event of breach by the employee. In addition to making a claim for damages, the employer may also seek an order prohibiting the former employee from soliciting its customers or employees.

3. Data Privacy

3.1 Data Privacy Law and Employment

The general position is that employee data collected by the employer should be treated as confidential and only used for the purposes for which it was collected. Employee data should be collected with the employee's consent.

In addition, the collection, processing and storage of employee data is governed by the Cyber and Data Protection Act (Chapter 12:07). According to this Act, a data controller is required to ensure that:

- the processing of data is necessary; and
- data is processed fairly and lawfully.

Within the employment context, sensitive data may be processed without the data subject's consent if the processing is necessary to carry out the obligations and specific rights of the controller in the field of employment law. Sensitive data is defined in the Cyber and Data Protection Act as (among other things) the racial or ethnic origin, political or religious affiliations, criminal history, or sex life of the data subject.

Employees, however, have the right to privacy. This is enshrined in Section 57 of the Constitution of Zimbabwe, which is used to prohibit an employer from breaching an employee's right to communications privacy and their right not to have their medical information disclosed.

4. Foreign Workers

4.1 Limitations on Foreign Workers

The Zimbabwe Investment and Development Agency Act (Chapter 14:38) permits foreign investors to employ senior expatriate staff in the capacity of a senior manager, technical and operational expert or adviser. There is no prohibition against employing foreigners under any other law, subject to the requirement that such foreign employees should be lawfully resident in Zimbabwe and in possession of an employment permit as required by the Immigration Act (Chapter 4:02) (as read with the Immigration Regulations (Statutory Instrument 195 of 1998)).

4.2 Registration Requirements for Foreign Workers

An employer who wishes to employ a foreign national is required to apply for the issuance of a temporary employment permit to the foreign national under Section 22 of the Immigration Regulations (Statutory Instrument 195 of 1998). The application for the employment permit should be accompanied by:

- a job offer from the employer;
- the prospective employee's educational and professional qualifications; and
- proof of the prospective employee's work experience.

The temporary employment permit will be issued for a period not exceeding five years.

5. New Work

5.1 Mobile Work

There are no restrictions on mobile work, which remains unregulated. However, in terms of data protection, the Cyber and Data Protection Act (Chapter 12:07) governs the storage and processing of data (not only by a data controller who is physically present in Zimbabwe but also by a data controller who is not permanently established in Zimbabwe) if:

- the means used for processing or storing the data, whether electronic or otherwise, is located in Zimbabwe; and

- such processing and storage is not for the purpose of the mere transit of data through Zimbabwe.

As regards occupational safety and social security, the National Social Security Authority Accident Prevention and Workers' Compensation Scheme (Prescribed Matters) Notice 1990 (Statutory Instrument 68 of 1990) excludes outworkers – defined as persons to whom articles or materials are given out by an employer to be made up, cleaned, washed, ornamented, finished, repaired or adapted for sale on premises not under the control of the employer – from the definition of “worker”. The result is that such workers are excluded from the scheme established under the Regulations for the compensation of workers who sustain injuries arising from their work or who contract diseases during the course of performing their work.

5.2 Sabbaticals

Zimbabwean legislation does not utilise the term “sabbatical”. However, under Section 25A of the Labour Act (Chapter 28:01), the works council may negotiate the terms on which paid educational leave may be granted to employees – whereas, under Section 74 of the Labour Act, the same negotiations may be carried out at employment council level. There is no legislative regulation of other forms of sabbatical leave, meaning that any such leave will be subject to the terms of the employment contract as a result.

5.3 Other New Manifestations

Section 18A of the Labour Act (Chapter 28:01) as amended by the Labour Amendment Act 2023 (No 11), which was gazetted on 14 July 2023, introduces the concept of contracts for hourly work. As mentioned throughout **1. Employment Terms**, under such contracts, an employee will be paid only for the hours actually worked – provided that their remuneration in any consecutive two-month period does not amount to less than the prescribed minimum monthly wage for the type of occupation in which the employee is engaged. In addition, the employer may not prohibit the employee from working for another employer during the time when the employee is not in fact engaged by the first-mentioned employer.

6. Collective Relations

6.1 Unions

Under Section 27 of the Labour Act, any group of employees may form a trade union, which will become a body corporate capable of suing and being sued in its own name upon its registration.

The role of trade unions is generally to represent the interests of their members in matters relating to their employment. The rights that are granted to trade unions under Section 29 (4) of the Labour Act include:

- the right of access to employees for the purposes of advising them on how the law relates to their employment, assisting them to form workers' committees and ensuring that their rights are observed;
- the right to be provided by employers with the names and other relevant details of their members;
- the right to make representations to a determining authority or to the labour court;
- the right to form or be represented on any employment council; and
- the right to recommend collective job action.

6.2 Employee Representative Bodies Workers' Committees

Workers are represented in the workplace by workers' committees. These are composed of employees that have been elected or appointed to the workers' committee by their fellow employees. It is not mandatory that there be a workers' committee in every undertaking.

Managerial employees may not be elected or appointed to a non-managerial employees' workers' committee and vice versa. Employees are entitled to assistance from a labour officer or a trade union when setting up the workers' committee.

Employers are under a legal obligation to negotiate in good faith with the workers' committee.

As set out in Section 24 of the Labour Act, the functions of a workers' committee are:

- to represent the employees in any matters affecting their rights and interests;

- to negotiate a CBA with the employer concerning the terms and conditions of employment;
- to recommend collective job action to the employees; and
- to represent the employees at works council level.

Works Council

The works council is a workplace forum made up of equal numbers of workers' committee members and managerial representatives. It exists in order to allow employer and employee representatives alike to discuss issues relating to employee welfare, productivity and workplace safety, among other things. The role of the worker representatives in the works council is to represent and advance the interests of the workers.

6.3 Collective Bargaining Agreements

The two types of CBAs recognised under Zimbabwean law are:

- CBAs negotiated between the workers' committee and the employer under the terms of Section 24 of the Labour Act; and
- CBAs negotiated between a registered trade union and a registered employer organisation.

Workplace-Level CBAs

CBAs that are negotiated between the employer and the workers' committee may address the terms and conditions of employment for employees who are represented by the workers' committee. They are subject to ratification by at least 50% of the employees and by whichever trade union is mandated to represent the employees. They are binding only on the employer concerned.

In the case of conflict between a CBA negotiated by the workers' committee and one negotiated between an employer's organisation and a registered trade union, the latter prevails unless the former has more favourable conditions.

Industry-Level CBAs

CBAs between employer organisations and registered trade unions are negotiated at National Employment Council level. They may regulate any conditions of employment, including working hours, overtime, leave

entitlement, health and safety standards, and minimum wages and benefits.

Industry-level CBAs must be registered and published as statutory instruments, thereafter becoming binding on all the employers and employees in the industry or sector to which the agreement relates. The provisions relating to minimum wages and benefits are reviewed regularly – in some cases, several times per year.

7. Termination

7.1 Grounds for Termination

Termination/Dismissal

Zimbabwean law creates a distinction between termination and dismissal. Although dismissal for misconduct is a form of termination, it is distinct from other forms of termination and is governed by a separate set of rules.

In the absence of misconduct, an employment contract may be terminated:

- by mutual agreement;
- through the employee's resignation;
- as a consequence of retrenchment; or
- through retirement.

Dismissal for misconduct is permitted only where it is effected according to the terms of an employment code of conduct or – in the absence of an employment code of conduct – under the national employment code of conduct. The applicable code of conduct will define what constitutes misconduct on the part of an employee. It is, however, accepted that codes of conduct do not contain an exhaustive list of offences and that some acts of misconduct may be determined from the common law or the terms of the employment contract.

The procedure to be followed where an act of misconduct has been discovered is outlined in the applicable code of conduct. Generally, the employee is notified of the commencement of investigations, whereafter a charge sheet is issued. Suspension may follow, depending on the nature of the offence and the provisions of the code of conduct. A disciplinary hearing

will be held, at which the employee is entitled to be present with witnesses and a representative. A determination and the imposition of a penalty will mark the conclusion of the proceedings.

There is, in all cases, a right of appeal against the initial determination. The appellate body may be an internal appeals committee or authority or it may be external (eg, the labour court). There is also a right to seek a review of the disciplinary proceedings on the basis of procedural irregularities.

A dismissal will be set aside if it was procedurally irregular or the appellate body finds that the act of misconduct was not proved or that the penalty was excessive. If the dismissal is set aside, an order for the reinstatement of the employee will be issued – with an alternative of damages for unlawful dismissal. In the case of a dismissal being set aside on the basis that the penalty was excessive, an alternative penalty will be imposed.

Collective Redundancies

An employer is entitled to retrench employees whose positions or duties have become redundant as a result of technological changes or the reorganisation or restructuring of the workplace. Employees may also be retrenched to reduce expenditure or costs or as a consequence of the closure of the enterprise in which they are employed.

An employer who intends to carry out a retrenchment exercise must give notice of such intent to the works council established for that undertaking. In the absence of a works council, the notice should be issued to the National Employment Council for the sector or industry. The notice should be copied to the retrenchment board and, where the retrenchment package has not been agreed by the employer and the affected employees, the notice must also be sent to the employees.

The retrenchment board is required to issue a notification certificate to the employer within 14 days of receiving notification of the retrenchment from the employer. The notification certificate will confirm the retrenchment on the basis of the minimum retrench-

ment package or an agreed retrenchment package (as the case may be).

Retrenchment packages

Section 12C of the Labour Act was amended by the Labour Amendment Act 2023 (No 11) to make provision for four types of retrenchment packages – namely:

- an agreed retrenchment package;
- the minimum retrenchment package;
- an enhanced retrenchment package; and
- a retrenchment package that is less than the minimum package.

An agreed retrenchment package refers to a package that would have been agreed between the employer and the employees being retrenched. It is a requirement that an agreed package must be more favourable than the minimum retrenchment package.

The minimum retrenchment package refers to the package that is stipulated by statute. The minimum retrenchment package is defined in Section 5 of the Labour (Retrenchment) Regulations, 2024, SI 191/24 (which came into effect on 6 December 2024) as one month's salary or wages for every year of service as an employee or the equivalent, lesser proportion (of one month's salary or wages) for a lesser period of service.

The retrenched employees may make an application to the retrenchment board or relevant employment council to compel the employer to pay a package which is above the minimum retrenchment package. Such a package is known as an enhanced retrenchment package. The retrenchment board or the employment council is required to call a hearing before making a determination on the employer's capacity to pay an enhanced retrenchment package.

The fourth type of retrenchment package is a reduced retrenchment package. An employer may apply to the retrenchment board or to an employment council for an exemption from paying a part of the retrenchment package due to financial incapacity. The maximum exemption that may be granted is 75% of the minimum retrenchment package.

A retrenchment exercise that does not follow the stipulated procedure – or one carried out in the absence of duly recognised causes of redundancy – may be treated as an unfair dismissal, thereby rendering it susceptible to being set aside.

An employer's failure to pay the retrenchment package on time or at all constitutes an unfair labour practice.

7.2 Notice Periods

A contract of employment may only be terminated on notice where:

- the termination is by mutual consent;
- the contract is terminated pursuant to a retrenchment exercise; or
- the termination is through the resignation or retirement of the employee.

The procedure relating to termination pursuant to a retrenchment exercise has been discussed in **7.1 Grounds for Termination**. In the case of termination by mutual consent, there are no stipulated formalities, except that the termination agreement must be in writing.

The applicable notice periods in relation to all the forms of termination listed under Termination on Notice are stipulated in Section 12 (4) of the Labour Act as follows:

- three months for contracts for a period of two years or more;
- two months in the case of a contract for a period of one year or more but less than two years;
- one month in the case of a contract for a period of six months or more but less than one year;
- two weeks in the case of a contract for a period of three months or more but less than six months; and
- one day in the case of a contract for a period of less than three months or in the case of casual or seasonal work.

An employer may elect to pay the employee cash in lieu of notice, rather than requiring them to serve the stipulated notice.

In addition, an employee whose permanent contract is terminated on notice through a mutual termination agreement is entitled to a severance package. This is calculated in accordance with Section 12C of the Labour Act, which provides for the compensation of retrenched employees. The parties are, however, entitled to negotiate a severance package that surpasses the stipulated minimum.

No external advice or authorisation is required in order to effect a termination on notice unless the termination is by reason of redundancy or retirement – in which case, respectively:

- the retrenchment board must be notified of the retrenchment; and
- the National Social Security Authority and the applicable pension fund must be informed of the retirement.

7.3 Dismissal for (Serious) Cause

Summary dismissal occurs when an employee is dismissed from employment without notice as a consequence of a grave act of misconduct. The dismissal will be preceded by disciplinary proceedings under the applicable code of conduct. The applicable procedure has been outlined in **7.1 Grounds for Termination** and, while it differs according to the applicable code of conduct, the procedure can generally be summarised as follows:

- the employer identifies the offence as defined by the code of conduct;
- the employee is notified of the commencement of investigations;
- the employee may also be suspended with or without pay;
- a charge sheet is issued informing the employee of the charge that they are facing;
- a disciplinary hearing will be held at which the employee is entitled to be present with their witnesses and representative; and
- a determination will be made and a penalty imposed in line with the penalty that is stipulated in the code of conduct.

An employee who is dismissed for misconduct is not entitled to notice or notice pay. They are, however, entitled to terminal benefits comprising:

- any unpaid salaries and benefits due at the date of dismissal;
- cash in lieu of accrued vacation leave; and
- any gratuity that may be due under the CBA.

A dismissed employee has the right to appeal against the dismissal to any internal appellate bodies and, thereafter, to the labour court. An appeal may also lie, at the election of the aggrieved party, to a labour officer as set out in Section 101 (5) of the Labour Act.

7.4 Termination Agreements

The employer and employee may agree to terminate the employment contract. This is referred to as mutual termination. The agreement has to be in writing. Best practice requires that the termination agreement should record:

- the effective date of the termination;
- the agreed termination package;
- the date on which or by which the package should be paid; and
- any other consequences of the termination, such as the return of the employer's property by the employee.

In the event that the termination relates to an employee who was employed on the basis of a contract without a fixed term, the employer is obliged to pay the minimum termination package stipulated in the Labour Act, unless the parties agree to the payment of a package exceeding the minimum. There are no other formalities that are required by law.

7.5 Protected Categories of Employee

All employees are equal and may be subjected to disciplinary action if the circumstances so require. This is also the case for employee representatives. However, if it can be demonstrated that a dismissal amounts to the victimisation of employee representatives, the dismissal will be considered unlawful.

8. Disputes

8.1 Wrongful Dismissal

Every employee has the right not to be unfairly dismissed. An employee is unfairly dismissed if the employer fails to show that the employee was dismissed under the terms of a registered employment code of conduct. In the absence of an employment code of conduct, the employer must show that the dismissal was carried out in accordance with the terms of the model or national code of conduct.

Disciplinary Proceedings

Disciplinary proceedings that are procedurally irregular may be set aside on review, particularly where the irregularity prejudiced the employee in the conduct of their defence. Examples of procedural irregularities include:

- the use of an inapplicable code of conduct;
- a failure to constitute the disciplinary authority or committee as stipulated in the code of conduct; or
- a failure to permit the employee to be accompanied by their legal representative.

Appeals

A dismissal may be found to have been unlawful on appeal if there was insufficient evidence to prove that an act of misconduct was committed as alleged. A successful appeal or application for review will result in the setting aside of the disciplinary proceedings, with or without loss of salary and benefits. If the dismissal is set aside and the employee is reinstated without loss of salary and benefits, the employer will be required to pay all the unpaid salaries and benefits that would have been due to the employee between the date of dismissal and the date on which the order for reinstatement was made.

Damages

An employer who elects not to reinstate the employee following an order for reinstatement will be required to pay the employee damages for loss of employment. These are calculated on the basis of the salary that would be due to the employee for the period of time it would take them to secure alternative employment. The employee is, however, required to mitigate their loss.

In applications for the review of disciplinary proceedings, a finding that the proceedings were irregular may result in the dismissal being set aside and the matter being remitted to the employer for a rehearing in a procedurally proper manner.

8.2 Anti-Discrimination

Under the terms of Section 5 of the Labour Act, employees and prospective employees are protected from discrimination on the following grounds:

- race;
- tribe;
- place of origin;
- political opinion;
- colour;
- creed;
- gender;
- pregnancy;
- HIV/AIDS status; or
- disability.

In addition to being subject to a claim for damages, an employer who contravenes the right of an employee or prospective employee to equal treatment may face criminal charges according to the terms of Section 5 (3) of the Labour Act. An employee who has been subjected to discrimination may also seek an order directing the employer to cease the discriminatory conduct.

An employee who makes a civil claim for damages arising from discriminatory conduct – or for an order directing the employer to cease such conduct – has the onus of proving the allegation of discrimination on the balance of probability. In the event that criminal charges are brought against the employer, the applicable standard of proof is proof beyond a reasonable doubt.

8.3 Digitalisation

The Labour Court (Amendment) Rules (Statutory Instrument 3 of 2023), which were gazetted on 6 January 2023, as read with the Judicial Laws Amendment Act No 5 of 2023, which was gazetted on the 16 June 2023, provide for:

- the filing and service of court process through electronic means; and

- the conduct of proceedings through videoconferencing.

The Zimbabwe Integrated Electronic Case Management System (IECMS) was implemented in the labour court on 1 February 2023. Under this system, pleadings are filed electronically on the IECMS platform and matters may be heard via videoconferencing. The digitalisation of labour court proceedings was preceded by the digitalisation of proceedings in the Supreme Court during May 2022.

9. Dispute Resolution

9.1 Litigation

The following are the authorities and courts that have the jurisdiction to hear labour matters.

Labour Officer

This is an official employed by the Ministry of Labour under the terms of Section 121 of the Labour Act. Labour officers are generally tribunals of first instance and they conduct conciliation proceedings in accordance with Section 93 of the Labour Act. In the event that conciliation fails, they are required to refer the dispute to arbitration. They have, in addition, been granted the jurisdiction to hear appeals from internal disciplinary proceedings under the terms of Section 101 (5) of the Labour Act. However, their powers in hearing appeals are confined to those that are set out in Section 93 of the Labour Act – that is – to attempt to settle the dispute through conciliation, and failing such settlement, to refer the dispute to arbitration. They have no adjudicatory powers.

Designated Agent

This is an individual employed by an employment council under the terms of Section 63 of the Labour Act. They have the same jurisdiction as labour officers to conduct conciliation proceedings. They also have the authority to redress disputes which are referred to them or otherwise come to their attention. Their jurisdiction is, however, limited to matters that arise in the industry in which the employment council is registered.

Labour Court

Under Section 89 (1) of the Labour Act, the labour court has the jurisdiction to hear applications and appeals in terms of the Labour Act or any other enactment. In the exercise of its functions, the labour court may refer a dispute to a labour officer, designated agent or arbitrator. The labour court also has powers of review over labour matters. An appeal on a question of law against a decision of the labour court lies with the Supreme Court.

Class Action Claims

According to the terms of the Class Actions Act (Chapter 8:17), a class action may be brought before the High Court on behalf of any class of persons. The class action should be preceded by an application for leave to bring the action. Although the law does not provide for class actions in the labour court, proceedings in the labour court or before labour officers or designated agents may be instituted by or against several named appellants, applicants or respondents.

Representation

Litigants may be represented in proceedings before labour officers, designated agents or the labour court by legal practitioners, trade union officials or employer organisation officials. Litigants may also represent themselves. In proceedings before the Supreme Court, employees and individual employers may either represent themselves or be represented by a legal practitioner, whereas corporate employers must be legally represented.

9.2 Alternative Dispute Resolution

A dispute may be resolved through arbitration in circumstances where:

- the dispute is referred to arbitration by the labour court under the terms of Section 89 (1)(d) of the Labour Act;
- the parties agree for the referral of the dispute to arbitration under Section 93 (1) or 93 (5)(b) of the

Labour Act, which is known as voluntary arbitration; and

- the dispute is a dispute of interest and the parties are engaged in an essential service.

In the third above-mentioned scenario, the labour officer to whom the dispute is referred is required in accordance with Section 93 (5)(a) of the Labour Act to refer the dispute to compulsory arbitration if it is not resolved through conciliation.

Arbitration proceedings may also be held in accordance with an arbitration agreement – in which case, they will be conducted in accordance with the provisions of the Arbitration Act (Chapter 7:15). An appeal on a question of law against an arbitral award that is issued following referral to arbitration under Sections 89 or 93 of the Labour Act lies with the labour court.

An award issued pursuant to arbitration proceedings that are held in accordance with an arbitration agreement is, however, not subject to appeal. It may only be set aside following an application to the High Court under the terms of Articles 34 and 35 of the Schedule to the Arbitration Act. Such an application will succeed only if it is demonstrated that the award:

- contravenes public policy; or
- is subject to some irregularity – for instance, the dispute cannot be resolved through arbitration.

9.3 Costs

The court or arbitrator is endowed with the discretion to make an appropriate order of costs. Usually, costs are awarded to the successful party on the party-and-party scale, which is lower than the attorney-and-client scale. Where circumstances warrant, however, costs will be awarded to the successful party on the attorney-and-client scale. An example of such circumstances would be where the unsuccessful party's conduct was reprehensible and thus deserving of a punitive order of costs.

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