# TABLE OF CONTENTS

About Guide to Going Global ................................................................. 3
Angola ................................................................................................. 5
Argentina .............................................................................................. 14
Australia .............................................................................................. 26
Austria .................................................................................................. 34
Bahrain ................................................................................................. 41
Belgium ................................................................................................. 48
Brazil ..................................................................................................... 56
Canada .................................................................................................. 63
Chile ...................................................................................................... 74
China ...................................................................................................... 83
Colombia ............................................................................................. 90
Czech Republic .................................................................................. 103
Denmark ............................................................................................... 111
Finland ................................................................................................. 121
France ................................................................................................... 130
Germany ............................................................................................. 140
Hong Kong, SAR ................................................................................ 148
Hungary ............................................................................................... 157
India ....................................................................................................... 165
Indonesia .............................................................................................. 183
Ireland .................................................................................................. 195
Israel ..................................................................................................... 203
Italy ........................................................................................................ 210
Japan ..................................................................................................... 218
Kenya .................................................................................................... 228
Kuwait ................................................................................................... 237
Luxembourg ....................................................................................... 244
Malaysia ............................................................................................... 253
Mexico ................................................................................................... 261
Morocco ............................................................................................... 268
Mozambique ....................................................................................... 276
Myanmar ............................................................................................... 288
Netherlands ......................................................................................... 299
New Zealand ...................................................................................... 308
Nigeria ................................................................................................... 315
Norway .................................................................................................. 324
Oman ...................................................................................................... 331
Peru ......................................................................................................... 338
Philippines ........................................................................................... 350
Poland .................................................................................................... 360
Portugal ................................................................................................. 370
Qatar ....................................................................................................... 380
Romania ............................................................................................... 389
Russia .................................................................................................... 398
Saudi Arabia ........................................................................................ 405
Singapore ............................................................................................. 414
<table>
<thead>
<tr>
<th>Country</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slovak Republic</td>
<td>428</td>
</tr>
<tr>
<td>South Africa</td>
<td>440</td>
</tr>
<tr>
<td>South Korea</td>
<td>450</td>
</tr>
<tr>
<td>Spain</td>
<td>460</td>
</tr>
<tr>
<td>Sweden</td>
<td>470</td>
</tr>
<tr>
<td>Switzerland</td>
<td>479</td>
</tr>
<tr>
<td>Taiwan, Republic of China</td>
<td>486</td>
</tr>
<tr>
<td>Thailand</td>
<td>493</td>
</tr>
<tr>
<td>Tunisia</td>
<td>506</td>
</tr>
<tr>
<td>Turkey</td>
<td>514</td>
</tr>
<tr>
<td>Uganda</td>
<td>525</td>
</tr>
<tr>
<td>Ukraine</td>
<td>534</td>
</tr>
<tr>
<td>United Arab Emirates</td>
<td>545</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>553</td>
</tr>
<tr>
<td>United States</td>
<td>560</td>
</tr>
<tr>
<td>Venezuela</td>
<td>570</td>
</tr>
<tr>
<td>Vietnam</td>
<td>583</td>
</tr>
</tbody>
</table>
INTRODUCTION


GUIDE TO GOING GLOBAL SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics that companies need to know. The Guide to Going Global series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

EMPLOYMENT

As business grows more global, the challenge for in-house counsel and HR professionals responsible for workforce issues and employment law compliance is intensifying. This guide is designed to meet that challenge head on and has been produced in response to feedback from clients in both established and emerging international businesses. We hope it will become an invaluable resource for you.

This 2021 edition of our popular guide covers all of the employment and labor law basics in 63 key jurisdictions across the Americas, Asia Pacific, Europe, the Middle East and Africa. From corporate presence and payroll set-up requirements, language rules, minimum employment rights, business transfer rules, through to termination and post-termination restraints, we cover the whole employment life span.

We have used our global experience and local knowledge to bring you this newest edition of our guide. With over 300 lawyers, DLA Piper’s global Employment group is one of the largest in the world, with one of the widest geographical footprints of any global law firm. We partner with our clients, wherever they do business, to find solutions and manage risk in relation to their legal challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to take advice in relation to specific matters. If you wish to speak to any of our contributors, their contact details are set out towards the back.

We hope that you find this guide valuable and we welcome your feedback.

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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

DLA Piper and any contributing law firms accept no liability for errors or omissions appearing in this publication and, in addition, DLA Piper accepts no liability at all for the content provided by the other contributing law firms. Please note that employment law is dynamic, and the legal regime in the countries surveyed could change.
ANGOLA

LEGAL SYSTEM, CURRENCY, LANGUAGE

Constitutional. The official currency is the Kwanza (AOA). The official language is Portuguese.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity may engage employees in Angola with proper payroll registrations, subject to business, corporate and tax considerations. The employer is responsible for withholding from an employee’s pay, and delivering to the tax authority, income tax and contributions to Angolan social security. The level of income tax is defined by the government and varies in line with the employee’s salary.

PRE-HIRE CHECKS

Required

Immigration compliance and pre-hire medical examinations.

Permissible

Reference and education checks are permissible.

IMMIGRATION

Criminal and medical checks must be issued by competent authorities, a criminal record must be issued by the home country and a medical certificate must be issued by a doctor in the employee’s home country.

The visa/work permit requirements for overseas nationals to work in Angola are having a recognized travel document valid for the Angolan territory for at least 6 months, being of legal age, not being included in the national list of undesirable persons prohibited from entering into the national territory, not constituting a danger to public order or to social security interests, complying with all health regulations established by the Ministry of
Health for entry into the national territory, having an employment contract or promissory employment contract, having a certificate of professional and educational qualifications and curriculum vitae, and obtaining a positive opinion of the competent Ministry.

HIRING OPTIONS

Employee

Indefinite-term contract (which is the rule), fixed-term or open-term (i.e., a term contract whose termination date has not yet been defined, but that will be terminated as soon as the underlying need for contracting is no longer verified – for example, as a contract to cover absence), part-time contract, telework contract and contract under service commission regime – a particular type of contract for high-level employees which provides flexibility for termination and is not common. The parties may execute an employment contract for a fixed term or open term, which must be done in writing. Part-time, fixed-term and open-term employees may not be discriminated against due to their status.

Independent contractor

Independent contractors may be engaged directly by the company or via a personal services company. Engagement may be subject to misclassification exposure. The factors that tend to indicate an individual is an employee (rather than, for example, a self-employed independent contractor) are the existence of a work schedule, the scheduling of vacation, the worker’s legal subordination to the company, the company’s authority, direction and disciplinary powers, control of punctuality and attendance over the individual, integration into the structure of the company and use of work tools belonging to the company, among others.

In the event of misclassification, the relationship may be converted into an employment relationship on a permanent basis, and the employer may be liable to pay a fine for non-compliance.

Agency worker

Agency workers may only be engaged to fulfill a temporary need for work. The agency work contract duration depends on the underlying reason for hiring and does not typically exceed 12 months. Agency workers have the right to equal treatment to employees in relation to pay and other regular benefits.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

Written employment contracts are common but not mandatory, except for fixed-term, part-time, telework and service commission regime contracts as well as contracts with foreign employees and underage employees. Employment contracts cannot contain conditions that are less favorable to employees than mandatory employment legislation.

Probationary periods

Permissible.
Employment contracts for an unlimited period of time may be subject to a probation period corresponding to the first 60 days of performance of work; the parties may, by written agreement, reduce or waive this period.

The parties may extend the probation period, in writing, to up to 4 months in case of employees who perform highly technical, complex work that is difficult to evaluate, and to up to 6 months in case of employees who perform management duties.

In an employment contract for a limited period of time, the parties may set forth a probation period in writing, and its duration cannot exceed 15 days in case of non-qualified employees, or 30 days in case of qualified employees. Angolan law does not define qualified and non-qualified, but the common practice is that qualified employees correspond to positions that involve technical complexity, a high degree of responsibility or special qualifications as well as those carrying out functions of trust.

**Policies**

Employers with more than 50 employees must, in order to organize the work and labor discipline, draft and approve employee handbooks, guidelines, instructions, service orders and work rules defining rules for the technical organization of work, performance of work and work discipline, delegation of powers, employee job descriptions, safety, hygiene and health protection of work, performance indicators, a remuneration system, working hours for the several sections of the company or work center, control of entrances and exits and circulation within the premises of the company, and surveillance and control of production.

Employers with 50 or fewer employees may, but are not required to, implement employee handbooks on the matters described above.

**Third-party approval**

Whenever the employee’s handbook or any other rules and regulations establish rules on performance and discipline, remuneration systems, work performance or safety, hygiene and health protection at work, the employer must forward such regulations for information and registration purposes to the General Labor Inspectorate.

**LANGUAGE REQUIREMENTS**

Portuguese. Nevertheless, employment contracts and other documents may be drafted in a bilingual template.

**MINIMUM EMPLOYMENT RIGHTS**

**Employees entitled to minimum employment rights**

All employees are entitled to minimum employment rights.

**Working hours**

Maximum daily and weekly working hours are 8 hours per day and 44 hours per week. Overtime pay is required for hours worked in excess of these limits. These limits are inapplicable to employees who perform direction and leadership duties, duties of inspection, or provide direct support to the employer (ie, employees who may be
exempt from a work schedule). In case the employee usually performs their work outside the company’s premises, an exemption regime may also be agreed upon by the parties, in which case those limits shall not apply. Typically, employees under the exemption regime are entitled to an exemption bonus.

**Overtime**

Overtime may occur with an extraordinary increase in workload, to prevent serious damage or if due to majeure force. It is subject to the following maximum limits: (a) 2 hours per day, (b) 40 hours per month and (c) 200 hours per year.

Overtime must be compensated with additional payment (ie, an increase of hourly rates) up to 30 hours per month: 50 percent, 30 percent, 20 percent and 10 percent depending on whether it is a large, medium, small or micro company dependent on number of employees and turnover. A company which is a subsidiary or branch of a company with headquarters abroad always qualifies as a large company. Overtime that exceeds that limit is paid for each hour at an additional 75 percent, 45 percent, 20 percent and 10 percent depending on whether it is a large, medium, small or micro company.

**Wages**

The minimum wage is established by Presidential Decree. It is set out as a general minimum wage, but there is also a minimum wage for trade and extractive industry groups, transport services and manufacturing groups and agriculture groups. Under the Decree currently in force, the general minimum wage is AOA21,454.10. The following sector-specific minimum wages also apply:

- Trade and extractive industry groups: AOA32,181.15
- Transport services and manufacturing groups: AOA26,817.63 and
- Agriculture groups: AOA21,454.10.

**Vacation**

Minimum 22 working days per year, plus 12 public national holidays.

**Sick leave & pay**

Employees are entitled to take off as much time as they need for sick leave. For large and medium companies: In case of incapacity to work due to illness or common accident, pay is required in the amount corresponding to 100 percent of the base salary for a period of 2 months. For as long as the employee is not entitled to protection in case of illness or common accident from the social security authorities, the employer must pay to the employee 50 percent of salary from the 3rd to the 12th month.

In case of small and micro companies: The employee is paid, in case of illness or common accident, the amount of 50 percent of the base salary within 90 days, after which the contract is terminated by expiration if the condition of illness remains.

**Maternity/parental leave & pay**

A pregnant employee is entitled to a paid maternity leave of 3 months. The amount of the maternity allowance is
equal to the average of the 2 best monthly salaries from the 6 months preceding the commencement of the maternity leave. The maternity allowance is paid directly by the employer to the employee and, subsequently, the Social Security services reimburse the employer in full. Fathers are not entitled to any leave on the birth of a child; it is only considered as a justifiable reason for absence from work for 1 day.

**DISCRIMINATION**

Discrimination based on the following protected characteristics is prohibited: race, color, gender, ethnic origin, marital status, origin or social rank, religious beliefs, political opinion, union affiliation and language.

**BENEFITS & PENSIONS**

Both employer and employee must pay contributions to social security in Angola to cover various employee benefits (eg, maternity leave payment and retirement pension). The employer must withhold the contribution due by the employee and deliver both contributions (ie, employer and employee) to social security every month.

Current general rates are 3 percent of the gross wage for the employee and 8 percent for the employer.

Employees with a minimum contributory period (ie, 35 years) qualify for a retirement pension at age 60 or in cases of total incapacity.

Employers have no legal obligation to provide complementary or supplementary social benefits in addition to the social coverage provided for by the social public scheme. However, some companies – mostly large companies or multinational companies who have their own schemes worldwide – set up and provide private complementary health and pension schemes to their employees.

**DATA PRIVACY**

The Data Privacy Law No. 22/11, June 17 governs Angolan data privacy and determines, in general terms, how to collect, use, disclose, store and give access to "personal information."

There is no specific regulation on employee data privacy.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

Provided that the same business activity is maintained, the new employer takes the position of the former employer in the employment contracts and takes their position in respect of the rights and obligations arising from the employment relationships. This is the case even if the employment contract is terminated before the transfer. The new employer takes their position as the employer of such former employees in respect of due and non-paid credits. All credits, rights and obligations of the employer arising from the execution and implementation of the employment contract, its violation or termination are subject to a statute of limitations of 1 year starting on the day following the day of termination of the contract. Employees keep the same seniority and acquired rights which they had in the service of their former employer.

The new employer undertakes the obligations of the former employer limited to those incurred during the 12
months prior to the modification, provided that, up to 22 business days prior to the modification, the new employer gives notice to the employees that they must claim their credits up to the 2nd business day prior to the date scheduled for such modification. Within 22 business days following the modification of employer, the employees have the right to terminate the employment contract with prior notice, but this does not confer any right to compensation.

EMPLOYEE REPRESENTATION

Employee representative bodies are permissible but not mandatory.

Trade unions are not common in Angola.

In order to carry out their duties, trade union representatives are entitled to 4 paid hours a month but must notify the employer in advance of the date and number of days they require for the exercise of trade union functions. Employers are obliged to provide a suitable place for workers' meetings whenever this is requested by the union representatives. Special protections against dismissal are granted to employees who perform, or have performed, duties as union representatives, either as leaders or delegates, or members of the employees' representative body performing union-related activities.

TERMINATION

Grounds

Unilateral termination by the employer: dismissal based on objective grounds (ie, redundancy reasons); disciplinary dismissal with just cause (ie, based on serious breach of the employee’s duties).

Termination without cause (with notice): only for employees hired under an employment contract of service commission regime (a particular type of contract for high-level employees which provides flexibility for termination but is not common).

Other termination causes: mutual agreement, termination by the employee (ie, termination with notice or constructive dismissal with just cause), expiration (ie, fixed-term and open-term contracts or retirement).

Employees subject to termination laws

All employees.

Restricted or prohibited terminations

Special protection against dismissal is granted to employees who perform, or have performed, duties as union representatives, either as leaders or delegates, or members of the employees’ representative body performing activities; women covered by the regime of maternity protection; war veterans as per the definition provided by the applicable law; employees under the legal age; employees with a reduced work capacity or with a disability degree equal or higher than 20 percent.

As a general rule, a copy of the notice served on the employee must be forwarded to General Labor Inspectorate.
Third-party approval for termination/termination documents

Except in respect of protected employees, third-party approval is not required to terminate an employment.

Mass layoff rules

If economic, technological or structural circumstances occur, which may be clearly demonstrated and which involve an internal reorganization or conversion, or the reduction or the shutting down of activities, which makes it necessary to eliminate or significantly change job positions, the employer may terminate the employment contracts of the employees who perform such job positions.

Collective dismissal rules are triggered if the dismissal involves at least 20 employees.

Information to the General Labour Inspectorate is required. However, there is no need to obtain approval for termination.

The General Labor Inspectorate may undertake the diligence deemed necessary for clarification of the situation and, in case of a collective dismissal, during the period in which the evaluation of the General Labor Inspectorate occurs, the employer may promote a meeting with the representative body or with the committee appointed for the purpose of exchange of information and clarification and may forward the conclusions of the meetings to the General Labor Inspectorate.

Notice

For individual dismissals based on objective grounds (up to 20 employees): the employer must forward, at least 30 days in advance, prior notice of dismissal to the employee or employees who occupy the job positions to be extinguished or transformed.

For collective dismissal: the prior notice is 60 days.

Notice periods in case of term contract: 15 business days if its duration is equal to or higher than 3 months.

Statutory right to pay in lieu of notice or garden leave

Payment in lieu of notice is permitted (and required if the notice period is not honored).

Garden leave is allowed during the notice period.

Severance

Fair dismissal based on objective grounds (redundancy/collective dismissal):

- Large companies: compensation corresponds to 1 base salary for each year of effective service up to the limit of 5 and an additional 50 percent of the base salary multiplied by the number of years of service that exceed such limit

- Medium companies: compensation corresponds to 1 base salary for each year of effective service up to the limit of 3 and an additional 40 percent of the base salary multiplied by the number of years of service which exceed such limit
• Small companies: compensation corresponds to 2 base salary and an additional 30 percent of the base salary multiplied by the number of years of service which exceed the limit of 2 years

• Micro companies: compensation corresponds to 2 base salary and an additional 20 percent of the base salary multiplied by the number of years of service which exceed the limit of 2 years

Fair disciplinary dismissal: no severance.

Higher severance payments may be agreed and are usual as a way to avoid litigation.

POST-TERMINATION RESTRAINTS

A clause of the employment contract which restricts the activity of the employee for a period of time, which may not exceed 3 years from the termination of the contract, is lawful if the following conditions are met: (a) such clause is included, in writing, in the employment contract, or in its addendum; (b) the activity performed may cause real damage to the employer and may be considered as unfair competition; (c) the employee is paid a salary during the period of restriction of work: the corresponding amount will be included in the contract or its addendum, and it must be taken into account, in its calculation, the fact that the employer may have incurred in significant expenses in the professional training of the employee.

A clause which requires an employee who benefits from professional improvement or higher level education at the expense of the employer to remain at the service of the same employer for a certain period of time, provided that such period does not exceed 1 year, in case of training of professional improvement and up to 3 years in case of courses of high level education, is also lawful if established in writing. In this case, the employee may release themselves from remaining at the employer’s service by repaying to the employer the amount of the expenses incurred by the employer, in proportion to the remaining time until the term of the agreed period. The employer that hires the employee within the period of restriction of activity in the company is jointly liable for the damages caused by the employee or for the amount not returned by the employee.

WAIVERS

In principle, statutory rights cannot be waived and any waiver of such rights will be null and void.

REMEDIES

Discrimination

Fine corresponding to 5 to 10 times the average salary paid by the company.

Unfair Dismissal

The employee may challenge the validity of the dismissal before the labor courts.

If the relevant court declares the dismissal to be unlawful, by final judgment, the employer must immediately
re-instate the employee in the same job position and benefiting from the same previous conditions, or, alternatively, shall indemnify the employee (compensation is different depending on whether it is a large, medium, small or micro company and the cause of dismissal).

In addition to re-instatement or the compensation, the employee is entitled to the base salaries they would have received if they had continued to perform work, until the date on which the employee finds a new job or up to the date of final judgment, whichever comes first, with a maximum limit of 6 months of base salary for large companies, 4 months to medium companies and 2 months for small and micro companies.

**Failure to inform and consult**

Not applicable.

**CRIMINAL SANCTIONS**

Typically, non-compliance with employment laws leads to administrative proceedings which may lead to the payment of fines. If such non-compliance is based on violation of rights that deserve protection under criminal law, it may also lead to this type of judicial proceedings.

**KEY CONTACTS**
ARGENTINA

LEGAL SYSTEM, CURRENCY, LANGUAGE

Constitutional and civil law with certain application of case law. The official currency is the Argentine Peso (ARS). The official language is Spanish.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

In order to set up a branch in Argentina, foreign companies must file certain documents before the local public registry of companies (e.g., bylaws and amendments, a certificate of good standing and a true and correct copy of a resolution of its board – or equivalent body – deciding to establish a branch in Argentina and appointing a legal representative in Argentina who must be an Argentine resident). Once the registration of the branch is approved by the public registry, the branch must request a tax ID from tax authorities (CUIT). Once the branch has obtained its CUIT, the branch is entitled to hire employees.

A foreign entity cannot hire employees in Argentina without a local corporate presence.

Employers must pay social security contributions (i.e., 23 percent or 27 percent on top of salaries, depending on the company’s activity and revenue). Employees must contribute 17 percent of their salaries to the social security system, to be withheld by the employer and subject to certain taxable limits. Income tax is also withheld by the employer when paying employees’ salaries (maximum rate 35 percent, subject to a progressive scale).

Collective bargaining agreements (CBAs) for certain activities provide payments to be made by the employer and/or the unionized employees to the relevant unions.

PRE-HIRE CHECKS

Required

- Pre-hire medical checks are required pursuant to resolutions issued by the Occupational Risk Superintendence. If an employee does not complete a pre-hire medical check, the employee will be deemed to have begun work in optimal health; therefore, any injuries or diseases that may arise in the future will be deemed to have happened during the employment relationship.
• Criminal record checks are required for foreign employees to obtain a work visa.

Permissible

Where criminal checks are not required for work visa purposes, they are only permissible – and are common in practice – for specific roles (eg, high-level managerial positions). Reference and educational checks are common and permissible, provided applicant consent was previously obtained.

IMMIGRATION

An individual from a non-Mercosur country must obtain a temporary residence permit that permits them to enter and work in Argentina. Temporary residency is granted for a maximum period of up to 1 year, extendable for periods of equal or shorter terms. After 3 consecutive years as a temporary resident, foreign employees are entitled to apply for permanent residence.

Citizens of Mercosur countries may apply for temporary Mercosur residence in Argentina without the need to present a work contract to the authorities. Temporary Mercosur residence is granted for 2 years and enables the individual to work and to apply for permanent residence on expiry of the temporary residence.

HIRING OPTIONS

Employee

Full-time, part-time, fixed-term, indefinite-term employees or trainees.

The following factors tend to indicate a labor relationship: availability to work for their employer, an employer who directs and subordinates the individual, and an employer who instructs the services and duties required and creates the individual’s schedule. Courts will also look at the extent to which the worker depends economically on the employer.

Independent contractor

Contractors should only be engaged where there is no labor relationship – that is, no direction/subordination or economic dependence.

Misclassification – that is, failure to register an individual as an employee – or submission of an incomplete or defective registration carries the risk of severe sanctions and fines from the authorities, including amounts owed to social security for unpaid contributions. In addition, steep fines are levied upon statutory severance, including the doubling of the amount of severance owed to a (misclassified) employee.

Agency worker

Employers may engage workers through agencies. Agencies must be authorized by the authorities to function as an agency.

The employer is jointly and severally liable with the agency for all labor obligations arising from the worker’s employment.
EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

There is no general legal requirement to execute employment contracts in a specific form – meaning that they can, for example, be in writing or made orally, unless a specific law or collective convention applies and indicates otherwise.

Notwithstanding, employers are advised to enter into a written employment contract.

Probationary periods

The maximum permitted duration of a probationary period is 3 months. After the end of the 3 month period, the employee will turn into an indefinite term employee.

Policies

The law does not require employers to have specific policies in place. Notwithstanding, there are some policies that are strongly recommended to prevent potential conflict, such as bonus policies.

Third-party approval

Third-party approval is not required for employment contracts or any policies.

LANGUAGE REQUIREMENTS

There are no statutory requirements to translate employment contracts, policies or other documents. However, books and accounting records must be kept in the Spanish language. Further, every document filed with an Argentine court must be in Spanish, or a certified translation executed by an Argentine sworn translator must be provided.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

The Employment Contract Law No. 20,744 (LCL) governs the minimum employment rights in Argentina.

Pursuant to Article 3º of the LCL, the law governs everything related to the validity, rights and obligations of the parties, provided the employment contract is performed in Argentina, even if the contract was entered into abroad.

The LCL applies to "workers," which covers not only employees working under an employment contract, but also other individuals who personally perform work or provide services for the employer.

For this purpose, "work" should be understood as any legitimate activity that is provided in favor of someone who has the power to direct that work, through the payment of remuneration for those activities and/or services.
The main factors that tend to indicate that an individual is an employee rather than a worker or self-employed worker are:

- The employee must be available to work for their employer or
- The employer directs and subordinates the employee, appoints the services and duties required and orders the employee to comply with a schedule.

Courts also consider the extent to which the worker depends economically on the income obtained from the alleged employer.

**Working hours**

The general maximum number of hours is 8 hours per day or 48 hours per week for all employed workers in public or private enterprises. Each extra hour worked above these limits is deemed overtime.

Notwithstanding the foregoing, Article No. 3 of Law No. 11,544, in its subsections a), b) and c), regulates exceptions to the abovementioned maximum limitation on working hours. The limitations do not apply to employees performing duties under the form of a "job team" – that is, working in a special coordinating rotation system – nor to employees performing duties in high-level positions (eg, main managers or directors).

**Overtime**

Employees in Argentina are allowed to perform overtime. Overtime is only compulsory in cases of danger, accidents or imminent force majeure, or by exceptional demands of the national economy or the company (Article No. 203 of the LCL).

Overtime must be paid with a surcharge of 50 percent, calculated using the employee's usual salary if the overtime hours were worked during business days, and 100 percent on Saturday after 1 pm, Sunday or holidays. In no event may employees work overtime of more than 3 hours per day, 30 hours per month or 200 hours per calendar year.

**Wages**

The national minimum wage (NMW) is updated regularly by the National Council of Employment dependent of the Ministry of Work, Employment and Social Security (Ministry). The NMW rate as of February 2022 is AR$33,000 per month (by means of Resolution No. 11/2021 of the Labor Ministry).

Most CBAs also provide for a specific minimum wage applicable to employees subject to the CBA.

**Vacation**

Employees with less than 5 years seniority are entitled to 14 calendar days after 6 months of work. This increases to 21 calendar days for employees with between 5 and 10 years of seniority, 28 days for employees with between 10 and 20 years of seniority and 35 days for employees with more than 20 years of seniority. For employees with less than 6 months of service, employers must grant 1 day of vacation per worked month. Companies should grant vacation to their employees between October 1 to April 30 of the following year.
Sick leave & pay

Sick or accident leave of up to 3 months per year must be provided to employees with less than 5 years of seniority, while 6 months must be granted to employees with seniority of 5 years or more. For employees with "family dependents" – generally understood to be the immediate family that economically depends on the employee's wage and labor benefits – these periods are doubled to 6 and 12 months, respectively.

Maternity/parental leave & pay

Pregnant employees may take leave of 45 days prior to giving birth and up to 45 days after giving birth. However, the employee may choose to reduce the leave prior to giving birth, as long as it is not less than 30 days, and may add those days to the maternity leave period after the birth of the child. In the event of premature birth, the period of the leave that has not been taken before the birth will be added to the leave period after the childbirth. Further, the employee is entitled to earn her gross remuneration, without any withholding contributions made to the social security system, during maternity leave. The ANSES (as defined below) pays the remuneration of employees during maternity leave.

Fathers are entitled to paid leave of 2 consecutive days for the birth of his child. There is no general regulation providing other parental leave after the birth of a child.

DISCRIMINATION

The law prohibits discriminatory acts or omissions based on race, religion, nationality, ideology, political or trade union opinion, sex, economic position, social condition or physical characteristics.

In addition, Argentina has ratified international antidiscrimination conventions, such as the Convention of Belem do Pará and the Convention on the Elimination of All Forms of Discrimination against Women.

BENEFITS & PENSIONS

The Social Security National Administration (Administración Nacional de la Seguridad Social or ANSES) is the authority in charge of the administration of the social security system in Argentina, called Sistema Integrado de Jubilaciones y Pensiones (SIJP). Employers and employees are required to make contributions to the SIJP which provides for old-age pension and disability benefits.

To qualify for a statefunded pension distribution, male employees must be 65 years old, while female employees must be 60 years old. In both cases, in order to qualify for pension the employee must have contributed to the SIJP for a minimum of 30 years.

Employers do not have a legal obligation to provide a private pension scheme for employees, as the employees are entitled to state pensions.

DATA PRIVACY

The Argentine Data Privacy Law No. 25,326 (Ley de Protección de los Datos Personales or LPDP) protects the
personal data stored in files, registers, data banks or other technical storage of data processing, whether public or private, in order to guarantee the right to honor and privacy of the data of individuals, as well as to restrict the access to such information, in accordance with the provisions set out in Article No. 43, third paragraph of the Argentine National Constitution.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Where there is an asset transfer that qualifies as a business transfer, all obligations arising from the employment contracts that the transferor has executed with its employees are taken on by the transferee after the transfer. Employment contracts continue with the transferee and the employees retain their seniority with the transferor and the rights arising from their contracts. Therefore, in the event that the whole business is transferred, on the execution of the transfer, all employees are automatically transferred to the transferee, without the need to secure employees’ written consent. Where there is only an assignment of staff without any business or asset transfer, the transferred employees’ written consent must be acquired. Without such consent, the employee may terminate the employment, with the right to compensation.

Although, in practice, both internal consultations and collective consultation with trade unions are required before a business transfer takes place, the transferor and the transferee are not required by law to inform or consult employees on a business transfer.

The transferor and the transferee are jointly and severally liable for any dismissals that arise due to the transfer.

EMPLOYEE REPRESENTATION

Argentina is a highly unionized country with approximately 3,100 active trade unions with considerable political power. There are unions in nearly all sectors or industries.

A trade union must be recognized by the Ministry. Only recognized and authorized unions may enter into a CBA. Employers cannot recognize an unauthorized union voluntarily, even for collective bargaining purposes.

The National Constitution sets out collective labor rights in its Article No. 14 (bis), guaranteeing unions the right to collectively bargain and the right to strike.

CBAs are common in Argentina. There are different types of CBAs depending on the sector in which they will be enforceable. Some CBAs only govern employees within a single company, whereas other CBAs govern employees performing certain activities in a geographical region or industry.

TERMINATION

Grounds

Cause is not required for termination of employment; however, it is required to avoid payment of statutory severance. There is no exhaustive and/or exemplary list of behaviors that constitute cause for dismissal; therefore, whether a dismissal is with or without cause will depend on judicial judgment on a case by case basis.

Who is subject to termination laws?
All employees.

Prohibited or restricted terminations

Public employees and union delegates cannot be dismissed without cause and without complying with the statutory procedure for these terminations. All other employees may be dismissed with payment of statutory severance, which will differ based on the case (eg, maternity or illness).

Pregnant employees are protected from dismissal. If a pregnant employee is dismissed within the period of 7.5 months before or after the date of childbirth, the pregnancy will be considered the cause of the dismissal, entitling the employee compensation for the discrimination equivalent to their annual salary, in addition to the applicable severance payment.

Further, if the dismissal occurs 3 months before the marriage of an employee or 6 months after it, the dismissed employee will be entitled to special compensation.

In order to dismiss employees while they are on sick leave, employers must pay a special severance payment (ie, full severance payment applicable for dismissal without cause, plus the salary which would have been payable during the entire time the illness would be expected to last, according to medical opinion).

Third-party approval for termination/termination documents

N/A.

Mass layoff rules

Prior to a mass dismissal, an employer must provide notice to the respective trade union that regulates the employer’s industry. Collective consultation may be required depending on employee headcount.

Prior to executing or communicating dismissals or suspensions due to force majeure, economic or technological causes that affects more than:

- 15% of the employees where total headcount is less than 400
- 10% of the employees where total headcount is between 400 and 1,000 and
- 5% of the employees where total headcount is greater than 1,000

Employers must comply with the Preventive Procedure of Companies Crisis (PPC) before the Ministry. During such procedure, the company engages in negotiation with the respective union acting on behalf of their affiliates. The aim of this procedure is to avoid business shutdowns or bankruptcy. After the company files the request before the Ministry, the claim is forwarded within 2 business days of the filing to the other party for its response. After a response is made, a settlement hearing is scheduled within the next 5 business days. If a settlement is not reached, the Ministry opens a “negotiating period” that must not extend beyond 10 business days. If the parties still do not reach an agreement within that period, the PPC process will conclude.

Notwithstanding this, in practice, this procedure normally takes longer than the law sets out.
Notice

In order to proceed with termination, employers must give notice to employees before the dismissal. The term of this notice will depend on the seniority of employees:

- During their probationary period, notice must be given to employees 15 days before termination
- In order to dismiss employees who have completed their probationary period but who have less than 5 years of seniority, notice must be given 1 month prior to the dismissal and
- Employees with more than 5 years' seniority must receive 2 months' notice before their dismissal.

Statutory right to pay in lieu of notice or garden leave

Employers are permitted to pay in lieu of notice. Current legislation does not regulate or prohibit garden leave.

Severance

An employee who is dismissed without reasonable cause is entitled to statutory severance of 1 month’s salary for each year of service, or period longer than 3 months. This amount is calculated using the employee’s highest monthly, regular compensation received in the last 12 months of work. This baseline cannot be more than 3 times the "monthly payment," which is the average of all compensation set out in the applicable CBA at the time of the dismissal; this average is periodically published.

If the employee is not subject to a CBA (typically, senior employees), the limits applicable to the activity in which they perform duties still apply. In no case will the amount of the compensation payable be less than 1 month of salary.

Currently, in the Vizotti case, the Supreme Court of Justice has raised the basis for calculating compensation subject to a limit, establishing that it will be 67 percent of the employee’s monthly and usual compensation, the amount to be multiplied by the employee’s years of service, based on constitutional reasons and in cases where the application of the legal limit imposes a reduction to the severance payment of more than 33 percent.

This severance payment may be reduced or increased in other types of termination (e.g., force majeure and lack or reduction of work, death of the employee, employer bankruptcy, employee retirement, employee illness or employee pregnancy).

Further, on December 13, 2019, the administration enacted Decree No. 34/2019 to protect the employment market. Specifically, it implemented double compensation in the event of dismissal without cause, which is effective until June 2022. Recently, by means of Decree No. 886/2021, the national government increased severance based on the timing of the dismissal, as follows: (i) severance payment will be increased by 75 percent if the dismissal occurs between January 2022 and February 2022; (ii) will be increased by 50 percent if the dismissal occurs between March 2022 and April 2022, and (iii) by 25 percent if the dismissal occurs between May 2022 and June 2022.

This regime applies to those employees who were employed on or before December 13, 2019 and are dismissed without cause between December 14, 2019 and June 30, 2022.

In case of dismissal without cause during the employment emergency period, the dismissed employee is entitled to
receive an increased severance payment in accordance with the current legislation, covering all the compensatory items originated by such wrongful termination.

**POST-TERMINATION RESTRAINTS**

Non-compete, customers and services providers, non-solicitation and employee non-solicitation clauses are often used, especially when the employer and employee negotiate the terms and conditions of the termination of the employment.

Restrictive covenants may be enforced post-employment, provided the employee receives compensation for the restrictions. Therefore, consideration is required for valid restrictive covenants. The amount must be fair and in accordance with the salary of the employee, their position in the company, the agreements that the company intends to impose and the extent (ie, period and territory) of the restrictive covenant.

The law does not specifically regulate restrictive covenants. However, most restrictive periods range between 2 and 5 years. Under certain circumstances, the court has enforced a 10-year post-termination restraint period, based on the business and the amount of consideration paid to the employee.

Where an employee is in breach of an agreement, the employer may file a claim against the employee in court requesting compensation for damages. The complaint may include injunctive relief to stop the violation immediately. Alternatively, courts may declare the covenant null and void if it has been drafted too widely.

**WAIVERS**

Pursuant to the LCL, any executed agreement that suppresses or reduces rights granted by the LCL, labor laws related to specific industries, collective agreements or individual employment contracts, either at the time of their agreement or execution, or the exercise of the rights arising from its termination, shall be null and void.

**REMEDIES**

**Discrimination**

Compensation is available as a remedy for discrimination or harassment. In the event of a complaint based on harassment, the employee may file a claim requesting the payment of the statutory severance payment applicable to dismissals without cause and an additional amount for the pain and/or emotional distress caused by the harassment.

Employers are liable for the acts of their employees. Therefore, the employer and the harasser are jointly and severally liable for the payment of any compensation granted to the victim.

**Unfair dismissal**

Employees may challenge a dismissal without cause within 2 years of the dismissal and seek payment of statutory severance, plus interest and court fees. The complaint must be filed before the labor courts.

**Failure to inform & consult**
CRIMINAL SANCTIONS

Breaches of labor law do not entail a criminal breach or sanction unless such a breach or offense is specifically regulated by the National Criminal Code as a crime. In that case, criminal sanctions will be applied for the breach of criminal law and not for the breach of labor law.

REGULATIONS AMID COVID-19 PANDEMIC

Given the coronavirus disease 2019 (COVID-19) pandemic and recommendations from the World Health Organization, the national government has enacted several measures related to employment in order to avoid the spread of COVID-19 and mitigate its consequences. These measures have been continuously adapted to the epidemiological situation of the country, and applied differently in each province, taking into account the number of cases and health resources, among others. The following summarizes the measures currently in force:

- **Double compensation**

  By means of Decree No. 34/19, the national government declared a public emergency in occupational matters for 180 days. As a result, in the event of an unjustified dismissal within this period, the worker shall be entitled to receive double the amount of mandatory severance. On June 10, 2020, Decree No. 528/20 extended this measure for another 180 days. By means of Decree 39/2021, this measure has been extended until December 2021. In addition, a cap of ARS500,000 has been established as applicable to the amount to be paid as double severance.

- **Ban on dismissals**

  On March 31, 2020, the national government banned wrongful and economic (lack-of-work) dismissals for a 60-day period. In addition, employee suspensions based on force majeure reasons or lack-of-work, or reduction-of-work were banned for 60 days. This measure has been continuously extended over the past year and, most recently on January 22, 2021, it was extended for another 90 days, by means of Decree 39/2021. Any dismissal or suspension violating this decree will be void.

- **Restrictions on public circulation**

  Through Decree No. 1033/2020, the national government has reserved the use of public transport for essential services workers (e.g., on-duty judiciary workers, personnel involved in public procurement, health workers, security forces, food industries, waste collection, deliveries and people attending a force majeure situation, among others). Therefore, private workers who not considered essential under this provision may commute by private means of transport (usually financed by the employer).

- **Emergency assistance to work**

  Decree No. 332/2020 – which was recently extended for the 2020 tax period through Administrative Resolution of the Federal Tax Bureau (AFIP) No. 4898/2020 – has created an Emergency Assistance to Work and Production Program (*Programa de Asistencia al Trabajo y la Producción*) for employers and workers affected by the health emergency and the economic situation. This program essentially consists in the following benefits:
1. Deferment or reduction of up to 95 percent of contributions to the social security system payment. This benefit will only be applicable for employers with up to 60 workers. If the limit of 60 employers is exceeded, the Preventive Crisis Procedure shall be applicable.

2. If certain considerations are met, private companies up to 100 workers may be entitled to a compensatory wage paid by the national government under the terms of Law No. 14,250 and its amendments.

3. Workers who meet the requirements set forth in Law Nos. 24,013 and 25,371 have access to economic benefits for unemployment in accordance with considerations stipulated therein.

Such benefits are applicable only under certain circumstances:

Workers and activities declared as essential within the health emergency will be exempt from the application of this decree.

- **Sanitary measures in the workplace**

Places and activities allowed to reopen shall adopt the following sanitary measures among any additional measure taken by specific activities:

- Social distancing (minimum 2 meters)
- Strict policies regarding hand hygiene, use of facial masks and gloves, if necessary
- As much as possible, activities must be held outdoors or in naturally ventilated places – air conditioner use is still not advisable
- Avoid overcrowded places or meetings – up to 10 people gathered in outdoor spaces is allowed
- Improve daily cleaning and disinfection and
- Temperature screening and health questionnaires shall be considered if people enter a given place (eg, shops, public entities and workplaces).

- **COVID-19 as an occupational disease**

By means of Decree 367/2020, occupational risk insurers (ART) must consider COVID-19 "to be an occupational disease," and the insurer may not "refuse to provide coverage" for workers considered essential. Through Decree No. 39/2021 issued on January 22, this provision has been extended to every worker currently performing its tasks and duties in their workplace.

The Labor Ministry, by means of the resolution No. 5/2020, set up a specific procedure to be followed if an employee reports a case of COVID-19. Further, it has been decided that workers affected by COVID-19 are able to make submissions online to the Central Medical Commission (Comisión Médica Central) and the Jurisdictional Medical Commission (Comisión Médica Local) through the online “Distance Procedures System” (TAD).

- **Telecommuting provisions**

By means of Decree No. 673/2020, the Telecommuting Law No. 27,555 was enacted, regulating dependent work
provided from employees at home or from a place other than the employer’s facilities or workplace. Certain modifications were introduced to the Labor Contract Law (LCL) incorporating section 102 (bis) to the title “Modalities of the Employment Contract,” which set up the teleworking concept. This law also establishes minimum legal requirements to execute teleworking. More rights and duties for “teleworkers” have been determined: right of reversibility (ie, the employee shall be entitled to exercise the option to return to the workplace at any time), right to digital disconnection (ie, the employee shall only be requested to perform its tasks within working hours), trade union rights and right to privacy.

On January 20, through Executive Decree No. 27/2021, the legal framework applicable to the Telecommuting Law was approved. The Executive Branch regulated 11 (out of 19) sections of the Telecommuting Law including the right to digital disconnection; the conditions under which caretaking tasks may be performed by teleworkers; limits and conditions for reversal; how work equipment shall be provided, and expenses thereto reimbursed; union representation of teleworkers; health and safety conditions; and right to privacy.

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LEGAL SYSTEM, CURRENCY, LANGUAGE

Common law jurisdiction with employment laws that operate at both the federal and state levels. The official currency is the Australian dollar (AUD). The official language is English.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity can engage employees in Australia subject to business, corporate and tax considerations and proper payroll registrations and injury insurance (ie, workers’ compensation) registration. Personal income tax must be paid by employees on their assessable income.

However, employers are obliged to deduct tax from an employee's remuneration (ie, Pay as You Go or PAYG tax withholding) and also to pay 10 percent of their salary – which may gradually be increased over coming years to 12 percent – into the employee's superannuation account, a form of pension system.

PRE-HIRE CHECKS

Required

Immigration compliance.

Other checks may be required depending on industry. For example, for most child-related employment, a Working with Children Check is required.

Permissible

Permitted with the applicant's consent and subject to relevant discrimination laws. Offers of employment may be subject to criminal record checks or medical examination if necessary to determine fitness for the inherent requirements of a particular job.

IMMIGRATION
Foreign nationals must apply for visas to visit, live and work in Australia. Application is through the various immigration programs and visas administered by the Australian Department of Home Affairs (DHA).

The Temporary Skills Short (TSS) visa (subclass 482) may be used by businesses to address skill shortages by engaging foreign nationals to live and work in Australia for 2 years – or up to 4 years in some circumstances – where a suitably skilled Australian cannot be engaged. Caveats or other limits on eligibility may apply. The former Temporary Work (Skilled) visa (Subclass 457) no longer accepts new applications.

HIRING OPTIONS

Employee

Individuals can be recruited on either a full-time, part-time or casual basis (ie, employed by hour or by day) or a fixed-term contract for a limited duration.

Independent contractor

Independent contractors may be engaged directly by the company or via a personal services company.

Agency worker

Agency or temporary workers can be used by some organizations for short periods. Labor hire licensing laws apply in some states or territories which may apply to use of agency workers. Agency staff members are not engaged as employees of the business where they are placed on assignment.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

A contract may be oral, but written contracts are strongly recommended. Additionally, all new employees must be given a Fair Work Information Statement (or, for casual employees, a Casual Employment Information Statement) containing key terms as soon as possible after the commencement of employment. Some employees whose work is covered by modern awards – industrial-legislation-based instruments that set minimum pay and conditions – may require a document in writing (eg, a contract or letter of offer) that specifies the modern award that covers them and their classification.

Probationary periods

Permissible. No statutory limit, but 3 to 6 months is common.

Policies

Generally not mandatory, but some policies – especially regarding anti-discrimination and harassment, bullying and occupational health and safety – are strongly encouraged by laws and regulations. Certain corporations may be required by law to have a whistleblower policy in place.

Third-party approval
No requirement to lodge employment contract or policies with or get approval from any third party.

LANGUAGE REQUIREMENTS

No statutory requirements.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

Most employees are covered by federal minimum employment rights; a minority derive minimum rights from state jurisdictions.

Working hours

For full-time employees, 38 hours a week, although an employer may require an employee to work reasonable additional hours.

Overtime

Overtime payment – or overtime loading – may be required under an applicable award or enterprise agreement. Employees not covered by an award or enterprise agreement must be paid at least national minimum wage for all hours worked.

Wages

National minimum wage for a permanent adult employee as of July 1, 2021 is AUD772.60 per week or AUD20.33 per hour. Casual employees are entitled to a “casual loading” on top of this amount. It may be permissible to pay junior employees a lower amount. The national minimum wage is reviewed annually.

Vacation

Four weeks’ paid annual (ie, vacation) leave during each year of service, accruing progressively. In addition, an employee is entitled to be absent from work and receive normal pay on a usual workday that is a public holiday; 8 days in total are observed nationally, with additional public holidays in some states and territories. Untaken annual leave is paid out to the employee on termination of employment. Casual employees are not paid for their vacation or public holidays. To make up for this, they receive extra pay, called casual loading.

Sick leave & pay

Employees are entitled to 10 days of paid personal or carer’s leave for each year of service, with untaken leave accumulating from year to year. An employee may take the leave if they are not fit for work because of personal illness or injury, or to provide support to a member of the employee’s immediate family who requires care or support because of personal illness, injury or an unexpected emergency. Personal or carer’s leave is not paid out on termination of employment. Casual employees are not paid for their sick leave. To make up for this, they receive extra pay, called casual loading.
Maternity/parental leave & pay

Each member of an employee couple – not necessarily employed by the same employer – is entitled to be absent from work without pay for separate periods of up to 12 months (with each employee’s leave generally to be taken as a single continuous period) in relation to the birth or adoption of a child, subject to certain conditions and exceptions. As a result, the couple may take up to a total of 24 months’ leave between them. However, if only 1 person is taking leave as opposed to both members of the couple, or if 1 member of an employee couple wishes to take more than 12 months’ leave, the employee may request a longer period from the employer. The period of extension cannot exceed 12 months less any period of parental leave taken, or intended to be taken, by the other member of an employee couple. Any extended period of parental leave taken by the 1 member of the couple reduces the amount of leave available to the other member of the couple by the same amount.

If both members of the couple are taking unpaid leave, the leave entitlement must be used in 2 separate periods. However, there are exceptions of “concurrent leave” and “keeping in touch” days, where the couple is entitled to take up to 8 weeks of unpaid parental leave at the same time.

A separate legislative paid parental leave scheme exists, entitling eligible employees to 18 weeks’ pay at the national minimum wage during their parental leave, to be paid by the government via employers.

DISCRIMINATION

The characteristics protected under equal opportunity and anti-discrimination legislation in the various states and territories of Australia, as well as under federal legislation, vary slightly from jurisdiction to jurisdiction. The protected characteristics common to all jurisdictions are race, color, sex, sexual orientation, age, physical or mental disability, marital or relationship status, family or carer’s responsibilities, pregnancy, religion, political opinion, national extraction, social origin, gender identity, intersex status or trade union membership.

BENEFITS & PENSIONS

Under the Superannuation Guarantee scheme, employers are effectively required to contribute 10 percent of employees’ "ordinary time earnings" to employee superannuation funds. There is a minimum monthly wage that should be paid before an employee is entitled to the 10 percent and a maximum contribution base. However, from July 1, 2022, the monthly wage threshold will be removed, meaning all employees – irrespective of their monthly wage – will be entitled to the 10 percent (subject to other eligibility requirements). Most employers make regular contributions to the employee superannuation fund rather than making lump sum quarterly or annual contributions.

Australian law additionally requires that all employers maintain adequate workers’ compensation insurance for the benefit of workers injured during the course of their employment.

DATA PRIVACY

Australia has stringent data privacy obligations. As a general rule, personally identifiable data may only be processed if it is required for the performance of the employment contract and constitutes an employee record. Certain acts and practices are exempt from the application of Australia’s data privacy laws, but there are strict
criteria which must be met for an exemption to apply. Employee records are generally exempt, but this exemption will not apply to documents that come into existence prior to the employment relationship (eg, pre-employment or hire documentation) or to documents relating to any contractors engaged by the business. At the time it collects personal information, the employer is required to provide the individual with a statement setting out the company’s obligations under Australia’s data privacy laws and the individual’s rights. Further restrictions apply for sensitive personal data.

Employee records – with the exception of tax file numbers – are not covered by the Australian notifiable data breach regime, which requires notification to the Office of the Australian Information Commissioner (OAIC) and to affected individuals of any data breach that could result in serious harm. However, the OAIC advises that it is good practice for employers to notify employees affected by a data breach so that they may take protective action.

The monitoring of individuals and their data is covered by various surveillance legislation in each state or territory. Essentially, surveillance of employees is prohibited in sensitive areas, such as washrooms and change rooms, unless the surveillance device is installed pursuant to a warrant or authorization. Surveillance is permitted in public areas if it conforms with relevant legislation. The monitoring of an employee’s use of a work computer (ie, emails and internet browsing) is governed by specific laws in some states.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

At common law, employees cannot be transferred from one employer to another without their consent.

Under the Fair Work Act, there are rules which apply if there has been a "transfer of business." The transfer of business rules apply when there is a connection between 2 employers – including the sale and purchase of all or part of a business, certain outsourcing and in-sourcing arrangements and where the 2 employers are associated entities – and the new employer agrees to employ some or all employees of the old employer within 90 days and there has been no significant change to the work performed by those employees. The main effect of the transfer of business rules is that a transferrable instrument (ie, a collective labor agreement, such as an enterprise bargaining agreement) that covered the employee before the transfer will continue to apply after the transfer and all service is regarded as continuous and accrual of leave benefits transfer with the employee, with some limited exceptions. The Fair Work Commission can make certain orders altering the effect of the transfer of business rules if it deems it appropriate.

**EMPLOYEE REPRESENTATION**

Any union validly appointed to represent an employee or employees must be recognized and dealt with according to the law. There are generally no employee representatives or works councils.

**TERMINATION**

**Grounds**

Termination can be brought about by mutual agreement; upon expiry of a fixed-term contract; by the employer, with or without notice (subject to law); or upon termination (ie, resignation) by the employee.

**Who is subject to termination laws**
Employees who have completed 6 months of service with their employer (or 12 months in the case of a small business employer with fewer than 15 employees, taking into account any employees of associated entities including foreign entities) and earn less than the high income threshold (currently AUD158,500); or who are covered by a modern award or enterprise (collective) agreement, are generally eligible to make a claim for unfair dismissal.

Prohibited or restricted terminations

Employers are prohibited from taking "adverse action" – including termination – against an employee because the employee has or exercises a "workplace right" or engages in "industrial activity," or because of a protected attribute, such as race, sex, age or disability. Further protections include a prohibition on an employer dismissing an employee because the employee is temporarily absent from work due to illness or injury for fewer than 3 months in a 12-month period.

Third-party approval for termination/termination documents

Not applicable.

Mass layoff rules

Reporting requirements apply where a decision is made to make 15 or more employees’ positions redundant, including notifying the relevant government agency and relevant unions.

Notice

Between 1 week and 4 weeks depending on length of continuous employment, although an employment contract, enterprise agreement or applicable modern award may specify a longer notice period. Where an employee is over 45 years of age and has completed at least 2 years’ continuous service, they will be entitled to an extra week’s notice.

Statutory right to pay in lieu of notice or garden leave

An Employer can usually make a payment in lieu of notice (subject to any applicable enterprise agreement or modern award). No right to garden leave unless specified in the contract.

Severance

The entitlement to severance as a result of a termination by reason of redundancy is based on a sliding scale and calculated by reference to the length of the employee’s period of continuous service on termination.

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<tr>
<th>Period of continuous service</th>
<th>Pay</th>
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<tbody>
<tr>
<td>Less than 12 months of service</td>
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<tr>
<td>12 months to less than 2 years of service</td>
<td>4 weeks’ pay</td>
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<tr>
<td>2 years of service to less than 3 years of service</td>
<td>6 weeks’ pay</td>
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<td>3 years of service to less than 4 years of service</td>
<td>7 weeks’ pay</td>
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<td>Years of Service</td>
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<td>4 years to less than 5 years</td>
<td>8 weeks' pay</td>
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<td>5 years to less than 6 years</td>
<td>10 weeks' pay</td>
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<td>6 years to less than 7 years</td>
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<td>7 years to less than 8 years</td>
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<td>8 years to less than 9 years</td>
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<td>16 weeks' pay</td>
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<tr>
<td>10 years and over</td>
<td>12 weeks' pay</td>
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Note: The scale drops from 16 weeks to 12 weeks. This is a historical anomaly that persists and is usually justified by the employee’s entitlement to long service leave after reaching 10 years' service.

A week’s pay is generally calculated on the basis of the employee’s base rate of pay.

Service prior to January 1, 2010 is only counted if the employee had an entitlement to redundancy pay under another instrument prior to that date.

There are some exceptions to this entitlement. An employment contract, enterprise agreement or modern award may also specify a greater entitlement.

**POST-TERMINATION RESTRAINTS**

Those that protect the employer’s legitimate business interests may be enforced to the extent reasonably necessary to protect those interests in all circumstances.

**Non-competes**

Typically no longer than 12 months, with some exceptions.

**Customer non-solicits**

Permissible.

**Employee non-solicits**

Permissible.
WAIVERS

Enforceable to waive contractual rights. Employees often cannot waive or contract out of statutory entitlements, including entitlements under a modern award or enterprise bargaining agreement.

REMEDIES

Discrimination

If an employee thinks they have been subject to "adverse action," including dismissal, because of a protected attribute, they may make a claim for a remedy under the Fair Work Act. Remedies include compensation and reinstatement; there is no cap on the amount of compensation that can be awarded. A civil penalty may also be ordered.

Compensatory remedies for discrimination may also be sought under federal or state anti-discrimination legislation. Damages for economic loss and general damages for hurt and suffering may be ordered.

Unfair dismissal

If the Commission decides that the employee has been unfairly dismissed, it may order the reinstatement of the dismissed employee (with or without back pay) or, if that is not practicable, the payment of compensation up to a maximum of 6 months' remuneration, or AUD79,250, whichever is less.

Failure to inform & consult

An employer who breaches a consultation obligation under an applicable modern award or enterprise agreement may incur a penalty and be liable to pay compensation.

CRIMINAL SANCTIONS

There are criminal sanctions for breach of relevant work health and safety laws, workers' compensation laws and taxation laws. The Queensland and South Australian labor hire licensing laws and underpayment laws in Victoria and Queensland provide for terms of imprisonment in respect of some breaches.

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View bio
AUSTRIA

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of the European Union (EU), so required to implement relevant EU directives. The official currency is the Euro (EUR). The official language is German.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity may engage employees in Austria with proper payroll registrations, subject to business and corporate tax planning considerations. Withholdings for pay-as-you-earn (PAYE) – that is, social insurance (employer and employee portion), severance payment funds (1.53 percent to an company pension fund, or betriebliche Vorsorgekasse, and local taxes) and income tax to be done through payroll.

PRE-HIRE CHECKS

Required

Immigration compliance.

Permissible

Criminal and credit reference checks are only permissible for specific roles (eg, certain finance positions) and subject to proportionality requirements. Reference and education checks are common and permissible with applicant consent.

IMMIGRATION

Nationals of the European Economic Area (EEA) and Switzerland have a right to work in Austria. For other non-Austrian nationals, immigration permission and a work permit are required.

HIRING OPTIONS
Employee

Indefinite, fixed-term, full-time or part-time. Part-time and fixed-term employees have the right not to be discriminated against due to their status.

Independent contractor

Independent contractors may be engaged directly by the company or via a personal services company. Engagement may be subject to misclassification exposure.

Agency worker

Agency workers are common and are either employees or workers. Agency workers have the right to equal treatment to employees in relation to pay and other benefit terms.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

Employment contracts are not required per se, but employees must be provided in writing with certain minimum terms defined by Austrian labor law:

- Name and address of the employee
- Name and address of the employer
- Start of the employment
- Termination date if the employment is on a fixed-term basis
- Notice terms
- General place of work, indication of altering workplace
- Job grade
- Job description
- Remuneration or salary
- Annual holiday entitlement
- Hours of work
- Applicable collective bargaining agreement and
- Name and address of the outside severance pay provider.
Other than the employment note (which does not qualify as a contract but serves only as a statement of facts), a written employment contract is not required, although it is recommended. Accordingly, written contracts are common.

**Probationary periods**

Permissible for the first month of employment, in general.

**Policies**

No mandatory policies.

**Third-party approval**

No requirement to lodge employment contract or policies with or get approval from any third party.

**LANGUAGE REQUIREMENTS**

No statutory requirements as long as the employee understands the agreement. However, it is recommended that the agreements be in German (or German and another language in bilingual format). In the latter case, there should be a provision that the German language version is the prevailing.

**MINIMUM EMPLOYMENT RIGHTS**

**Employees entitled to minimum employment rights**

All employees are entitled to minimum employment rights provided by law. In addition, most employees are entitled to minimum rights provided by the applicable collective bargaining agreement. Since in Austria almost every industry branch has its own collective bargaining agreement, minimum rights may differ (e.g., minimum wages, annual leave and working time).

**Working hours**

In general, a limit of 40 hours a week and 8 hours a day. Most collective bargaining agreements provide for a 38.5-hour week.

**Overtime**

Working overtime is generally permitted; employers and employees must agree whether the overtime is compensated through payment of a surcharge or compensatory time off in lieu of payment. Individual agreements for all-in salaries are generally possible, depending on the individual status of the employee. For all-in salaries agreed after December 29, 2015, the employer is obligated to declare which amount of the salary is for the normal working time (i.e., base salary) and which is deemed as overpayment for overtime work. The base salary must be at least the minimum wage according to the applicable collective bargaining agreement.

**Wages**

Mandatory minimum wages provided in collective bargaining agreements, not by law.
Vacation

25 working days per year, and 30 working days per year after 25 years' seniority.

Sick leave & pay

Legal obligation to provide payment for 6 weeks; after that period, obligation to pay 1/2 for another 4 weeks. In case of a work accident or an occupational disease, the employee is entitled to sick payment for 8 weeks (with effect from July 1, 2018).

Maternity/parental leave & pay

Minimum maternity leave starts at 8 weeks before giving birth, according to the calculated birth date by a physician, and ends at 8 weeks after birth. The mother is paid a portion of her wages from social insurance in that period. Unpaid parental leave with the right to return to work for up to 2 years after birth of the child.

Within 8 weeks of the birth of their child, fathers are legally entitled to a "daddy month." The daddy month is unpaid by the employer, but the employee receives an allowance from social insurance.

DISCRIMINATION

Characteristics protected from unlawful discrimination and harassment include age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex or sexual orientation.

BENEFITS & PENSIONS

Currently, no benefits required above those covered under social insurance contributions.

DATA PRIVACY

Employees must be generally notified of personal data processing – and, in certain cases, must give consent. Strict rules apply to data transfer outside the EEA. Monitoring employees usually requires an agreement with the works council, if any, or an individual agreement with each employee. Since May 2018, Austria has been subject to the General Data Protection Regulation (GDPR), which has introduced significant new obligations and onerous sanctions for employers.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Automatic transfer under the Austrian rules implementing the EU Acquired Rights Directive in a business sale or service provision change. Significant restrictions on changing terms and conditions following a transfer. Duty to inform and consult with employees and/or the works council, if any. Any dismissal connected to the transfer is void unless for a good reason.
EMPLOYEE REPRESENTATION

Trade unions are prevalent in almost every sector. Collective bargaining agreements are very common, including industrywide collective agreements. Every employee in an applicable sector by law is a member of their trade union. Works councils are very common and may be established in every business with at least 5 employees.

TERMINATION

Grounds

No grounds required. In special cases (eg, if termination is exceptionally hard for the employee and therefore socially inadequate), the employee may claim unfair termination and reinstatement. Where the termination is deemed socially inadequate, the employer would need business reasons or reasons relating to the employee to justify the termination.

Employees subject to termination laws

Employees with fewer than 6 months’ seniority have no unfair dismissal protection.

Prohibited or restricted terminations

Certain employees (eg, pregnant employees, disabled employees and members of works councils) enjoy special protection, and their termination requires prior approval by the competent court or institution.

Third-party approval for termination/termination documents

With the exceptions outlined above, approval is generally not required to implement a termination. If a works council exists, the works council has a right of information and may give a statement. Special documents (eg, termination in writing) are generally not mandatory; collective bargaining agreements or special legal provisions (eg, with respect to trainees) may provide different regulations.

Mass layoff rules

It is mandatory to inform the competent Austrian authorities of a mass layoff. That is, if the employer employs between 20 and 100 employees, termination of at least 5 employees; if the employer employs between 100 and 600 employees, termination of at least 5 percent of the employees; and, if the employer employs more than 600 employees, termination of at least 30 employees – triggers an obligation to inform authorities. Termination of at least 5 employees, each older than 50 years, triggers an obligation to inform the competent authorities regardless of the threshold outlined above. Furthermore, redundancy programs must be implemented together with the respective works council.

Notice

For the employer, minimum of 6 weeks’ statutory notice to the end of every calendar quarter (possible agreement to 6 weeks to the end of every month and/or 15th of every month, which is common); additional notice due to seniority. Not required for terminations for cause.
For the employee, 1 month to the end of every month, if not agreed otherwise. Not required for terminations for cause.

**Statutory right to pay in lieu of notice or garden leave**

No payment in lieu of notice. Right to place an employee on garden leave depends on contract terms.

**Severance**

Two systems of statutory severance pay exist in Austria. One applies to employment contracts commenced before January 1, 2003 (old severance pay). The other system is applicable for employees with a starting date after January 1, 2003 (new severance pay). The difference between the two systems is that, within the old regime of statutory severance pay, the employee has a direct claim against the employer, unless an employee terminates the employment relationship or is dismissed for cause. Within the new severance pay, every month during employment, the employer is obliged to pay 1.53 percent of the gross salary to an external company pension fund (betriebliche Vorsorgekasse). The employee then has a severance right against that fund, but there is no additional severance payable by the employer.

**POST-TERMINATION RESTRAINTS**

Those that protect the employer’s legitimate business interests may be enforced if reasonable. Garden leave is common for senior employees.

**Non-competes**

For special employees with a higher income permitted, but not longer than 12 months. If the non-competition clause is valid and enforceable (depending on if (i) the employee terminates the employment, if (ii) the employment relationship has been terminated by the employer for good reason with immediate effect or if (iii) the employee has terminated the employment with immediate effect without good reason), there is no requirement for payment during the non-competition period. If it is not enforceable (eg, if the employer terminates the employment without good reason), the employer may pay the salary during the non-competition period in order to make the non-competition clause enforceable.

**Customer non-solicits**

Permissible in narrow circumstances.

**Employee non-solicits**

Permissible.

**WAIVERS**
Not enforceable for the future with respect to statutory rights. With respect to rights already accrued, Austrian courts usually are of the opinion that employees may not waive them.

**REMEDIES**

**Discrimination**

Compensation based on the claimant’s financial loss and injury to feelings as well as recommendation that the employer takes action.

**Unfair dismissal**

Claim for reinstatement of the employment agreement. Alternatively, compensation based on the claimant’s financial loss as a result of the employer having failed to give proper notice.

**Failure to inform & consult**

Nullity of termination if information of work council or an authority is required.

**CRIMINAL SANCTIONS**

Criminal sanctions are not generally a concern.

**KEY CONTACTS**

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BAHRAIN

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law system. Employment matters are governed by Law No. 36 of 2012 (Labor Law) as amended. The official currency is the Bahraini Dinar (BHD). The official language is Arabic.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign employer cannot directly engage employees in Bahrain without being registered under the Commercial Registry in the Ministry of Industry, Commerce and Tourism.

Foreign employers are required to register at the Labor Market Regulatory Authority (LMRA). Following the registration process, work permits are then allocated – the number of which will depend on the type of activity of the establishment – through the Expats Management System (EMS).

As stipulated in LMRA law, establishments are required to pay monthly fees on each expatriate employee working for it.

There has been a move towards requiring payment in local currency into local bank accounts through local payroll, but this is not yet strictly enforced.

PRE-HIRE CHECKS

Required

Foreign employees must receive prior approval from the LMRA and Ministry of Interior before they may be hired on local employment contracts. The level of background checking and screening carried out by Bahrain authorities varies according to the nationality and proposed position of an individual.

Permissible

Generally, employers in Bahrain are not able to obtain the same level of information from background checks as they can in other jurisdictions and, in most cases, the employees themselves are required to provide this information. As such, a Certificate of Good Conduct from the Criminal Investigation Directorate is the most
commonly requested document.

IMMIGRATION

In order to legally work and reside in Bahrain, all employees except Bahrain and Gulf Cooperation Council (GCC) nationals are required to have a residence visa and work permit under the sponsorship of their employer, which must have an entity registered in Bahrain.

When an employee is only required to work in Bahrain for a short period of time, there are alternative permits and visas that may be applied for, including the 72-hour visa, 7-day visa and business visas.

HIRING OPTIONS

Employee

Unlimited or fixed-term. Part-time employment is legally possible but is not common.

Independent contractor

There is no concept of a consultant, unless individuals have established their own professional license and business.

Agency worker

There is no general concept of an agency worker or "temp" in Bahrain. Some Bahraini-owned employment agencies are licensed to provide manpower on a temporary basis; such employees remain under their sponsorship.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

Unlike some other GCC countries, Bahrain does not require the signing of a government contract. However, the contract entered into between the employer and the employee must be registered with the LMRA in order to obtain the employee’s work permit and residence visa. Under the Labor Law, the contract should be in Arabic, but in practice, where contracts are drafted in another language, an Arabic-translated version may be attached to fulfill this requirement.

Probationary periods

Generally, a duration of 3 months is allowed, although this may be increased up to a maximum of 6 months in respect of certain occupations.

Policies

Employees should be provided with any relevant staff handbook and the employer’s policies, if applicable, on commencement of employment. The Labor Law specifies that company policies and internal regulations must be openly displayed to employees.
Third-party approval

The employment contract must be registered with the LMRA to obtain the employee’s work permit and residence visa. Strictly speaking, any contractual changes should be notified to the LMRA and amended on the filed employment contract copy.

LANGUAGE REQUIREMENTS

Pursuant to the Labor Law, all employment contracts and records must be in Arabic. Where a contract has been drafted in a foreign language, an Arabic-translated version may be attached to fulfill this requirement. If a document is registered in a dual language format and a dispute arises, then the Arabic version of the document will prevail.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All employees. Additional rights are also available to minor workers (ie, those under the age of 18) and women.

Working hours

The maximum ordinary working hours is 48 hours per week at the rate of 8 hours per day. During the month of Ramadan, the maximum working hours is 36 hours per week at the rate of 6 hours per day.

Overtime

Not to exceed 2 hours per day.

Wages

At present, pursuant to the National Employment and Training Scheme, Bahraini nationals who hold high school diplomas are entitled to a minimum wage of BHD270 monthly. Bahraini nationals who hold diploma degrees are entitled to a minimum wage of BHD350 monthly, and Bahraini nationals who hold university degrees are entitled to a minimum wage of BHD400.

Vacation

Employees are entitled to 30 days’ vacation, where the employee’s period of service is at least 1 year accrued at a rate of 2.5 days a month. If an employee’s period of service is less than 1 year, leave is calculated on a pro-rated basis.

Sick leave & pay

Employees are not entitled to statutory sick leave until they have completed 3 months’ service and provided they have proven their sickness with a certificate from a physician approved by the employer. Employees are entitled to 55 days of sick leave per year of service thereafter (ie, 15 days at full pay, 20 days at half pay and the remaining 20 days without pay). The entitlement of a worker to sick leave on full or half pay may be accumulated for a period not exceeding 240 days.
Maternity/parental leave & pay

60 days’ maternity leave at full pay. A female employee may take a further 15 consecutive or non-consecutive days without pay.

A male employee is entitled to 1 day of paternal leave at full pay for the birth of their child.

DISCRIMINATION

The Labor Law prohibits discrimination between workers and in the payment of wages on the basis of sex, ethnic origin, language, religion or belief. Further, dismissals on the basis of sex, color, religion, belief, social status, family responsibilities, a female worker’s pregnancy, childbirth or nursing an infant shall be deemed automatically unfair.

BENEFITS & PENSIONS

Bahraini nationals are entitled to a state retirement pension, and certain contributions on a monthly basis must be made by the employer and employee to the relevant authority. Typically, expatriate employees have their own individual pension arrangements. Some employers also provide contributions depending on the employer’s policy and employee hierarchy, although there is no legal obligation to do so. In addition, a 3-percent contribution to social security is implemented on expatriate employees (2 percent of which is paid by the employer and 1 percent by the employee).

DATA PRIVACY

Personal data privacy is protected under Law No. 30 of 2018 with respect to Personal Data Protection (PDPL). Employees must be notified prior to processing their personal data, and their prior written consent should be obtained (unless exceptions stipulated under the relevant legislation are present) for such processing and transfer of their personal data.

Transfers of personal data out of Bahrain is prohibited unless the transfer is made to a country or region that provides sufficient protection to personal data. Those countries have yet to be listed by the Personal Data Protection Authority or published in the Official Gazette.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

No automatic transfer principles and no laws covering business transfers. Employees transfer through termination and rehire in an asset deal.

EMPLOYEE REPRESENTATION

Trade unions are permissible in Bahrain, and employers are required to consult with them in the event that an employee is retrained to perform different job duties from the work originally agreed upon. Employees are also entitled to strike in defense of their interests according to the Labor Law.
**TERMINATION**

**Grounds**

Termination is possible on the following grounds: during the probationary period, on the expiry of a fixed-term contract, dismissal with notice provided it is for a valid reason, failure to improve performance after reasonable opportunity (ie, 60 days), resignation, incapacity or death, redundancy, retirement (age 60) and summary dismissal by reason of any of the grounds listed in Article 107 of the Labor Law.

**Employees subject to termination laws**

All employees are subject to the Labor Law, save for domestic servants and persons regarded as such, including agricultural workers, security house-guards, nannies, drivers and cooks.

**Prohibited or restricted terminations**

Employees who have not exhausted their statutory sick leave entitlement are protected from dismissal on grounds of health, unless their full sick leave entitlement has been taken (ie, 55 days per year of service). The worker may accumulate the balance of sick leave on full or partial pay to which the worker is entitled for a period not exceeding 240 days. Female employees are protected from dismissal during maternity leave and by reason of their marriage.

**Third-party approval for termination/termination documents**

Any office closures must be reported to the Ministry of Labor and Social Development. Bahrain nationals are generally entitled to higher protection from dismissal in such circumstances and may accordingly be awarded higher compensation payments by the authorities.

**Mass layoff rules**

Governed under Article 110 and 111 of the Labor Law.

**Notice**

30 days’ statutory notice.

**Statutory right to pay in lieu of notice or garden leave**

Depends on the Labor Law and contract of employment.

**Severance**

Unless terminated under Article 107 of the Labor Law, employees are entitled to salary and benefits up to the termination date, notice (or payment in lieu), payment in lieu of accrued but untaken annual leave, the cost of an airline ticket to repatriate the employee to their home country unless the employee has obtained alternative sponsorship to remain in Bahrain, an end-of-service gratuity payment (EOSG) and reimbursement of unpaid business expenses.

In case of employer termination, employees are eligible for payment of an EOSG which accrues at the rate of half a
month’s wage for each of the first 3 years of service and 1 month’s wage for each of the following years of service. The calculation is pro-rated for any fractions of a year of service that have not been completed.

**POST-TERMINATION RESTRAINTS**

It is permissible to have restrictive covenants contained in the contract of employment to the extent necessary to protect the legitimate interests of the employer, provided the nature of the employee’s work allowed them to know the company’s clients and/or know the secrets of the business.

Covenants must be restricted in relation to their duration (which must not exceed 1 year), geographical scope and the nature of the business to be protected.

Parties are permitted to include a liquidated damages clause in the contract of employment, as it is difficult to obtain an injunction in Bahrain, but contractual provisions imposing a penalty (rather than a genuine estimate of the loss incurred) are likely to be unenforceable.

**Non-competes**

Typically no longer than 6 to 12 months.

**Customer non-solicits**

Typically no longer than 6 to 12 months.

**Employee non-solicits**

Permissible.

**WAIVERS**

Waiver agreements are commonly used, but there is no clear data to illustrate their positive effect.

**REMEDIES**

**Discrimination**

An employer’s termination shall be deemed automatically unfair if it is based on the employee’s sex, race, religion, belief, social status or family responsibilities and, in the case of female employees, on pregnancy, childbirth or nursing an infant. The employee is entitled to compensation as detailed in the “Arbitrary dismissal” section.

**Arbitrary dismissal**

The employee is entitled to compensation equivalent to 3 days’ wages for each month of service and no less than 1.5 month’s wages up to a maximum of 18 months’ wages.

**Failure to inform & consult**
Not applicable.

**CRIMINAL SANCTIONS**

Criminal sanctions may be imposed for a variety of reasons, including but not limited to the breach of health and safety obligations, breach of immigration laws, breach of data protection laws and breach of confidentiality.

**KEY CONTACTS**

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BELGIUM

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of European Union (EU), so required to implement relevant EU directives. The official currency is the Euro (EUR). The official languages are Dutch, French and German.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity may engage employees in Belgium with proper registration as employer, proper payroll registrations and proper registration of the employees. Payment of social charges on remuneration (up to approximately 27 percent for the employer portion for white-collar employees and up to approximately 13.07 percent for the employee portion) and income tax at progressive rates according to the amount of income (up to 53.5 percent, updated periodically), to be done through payroll.

PRE-HIRE CHECKS

Required

Immigration compliance (work permit and/or residence permit).

Permissible

Criminal checks are only permissible under exceptional circumstances for specific roles and subject to proportionality requirements. Reference and education checks are common and permissible.

IMMIGRATION

Nationals of the European Economic Area (EEA) and Switzerland, in principle, have a right to work in Belgium. For other non-Belgian nationals, a work and/or residence permit is likely to be required.

HIRING OPTIONS
Employee

Indefinite, fixed-term (including a specific assignment), full-time or part-time. The law provides for specific employee categories to which specific terms of employment apply, such as sales representatives, structural remote workers (ie, teleworkers or homeworkers) and students, among others.

Part-time and fixed-term employees, and, among others, sales representatives, structural remote workers (ie, homeworkers or teleworkers) and students, have the right not to be discriminated against due to their status.

Independent contractor

Independent contractors may be engaged directly by the company or via a personal services company. Independent contractors cannot deliver their services under an employer’s authority of, and in a subordinate position towards, the principal.

Agency worker

Agency workers are common, but may only be employed to temporarily replace an employee whose employment contract is terminated or suspended, to address an extraordinary increase of the workload, or to fill in a vacancy. Each type of agency work is subject to strict conditions and is limited in time. Agency workers can moreover only be in service with licensed interim agencies. Agency workers have the right to equal treatment to employees in relation to pay and other benefits.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

Verbal contracts are legally possible.

There are, however, specific requirements for written employment contracts with regard to specific clauses (eg, trial period, non-compete and notice) and specific contracts (eg, fixed-term, part-time and working-from-home arrangements).

Probationary periods

It is no longer permissible to insert a trial period into an employment contract, except in an employment contract for students, temporary work or interim agency work.

Policies

Work regulations containing, among others, applicable work schedules, an overview of disciplinary measures, a grievance procedure and a policy on alcohol and drug abuse, as well as a written health and safety policy (eg, a global prevention plan, yearly action plan, dynamic risk prevention system and risk analysis), are mandatory.

Third-party approval

No requirement to lodge employment contract with, or get approval from, any third party. A copy of the work regulations and their annexes, as well as any modification of the work regulations and/or their annexes, must be
LANGUAGE REQUIREMENTS

Either Dutch, French or German is mandatory, depending on the employee’s place of work or the location of the registered office of the business for which the employee is working. The place of work or location of the registered office of the employer is determined on a case-by-case basis, depending on the factual circumstances.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All employees are entitled to minimum employment rights, but some categories of employees are excluded from the scope of the legislation on working time and overtime, such as employees with a managerial position or a position of trust, who are strictly defined by royal decree, sales representatives and home workers.

Working hours

Average of 38 hours per week limit on working time. Deviations based on industry level provided in collective bargaining agreements within the competent joint committees.

Overtime

In principle, only allowed in legally defined circumstances and, in some cases, when specific legally defined formalities are met, which vary depending on the legal reason justifying the performance of overtime.

Overtime can moreover only be performed when instructed by the employer.

Wages

At least EUR 1,691.40 gross per month; deviations on industry level and deviations for employees younger than 21 years or with limited seniority.

Vacation

30 days per year, which includes 10 public holidays; deviations on industry level possible.

Sick leave & pay

Employees are also entitled to sick leave in case of incapacity of work. Employees are entitled to 30 days’ guaranteed remuneration, paid by the employer:

- If the employee is a white-collar worker: equal to 100 percent of the employee’s remuneration
- If the employee is a blue-collar worker: equal to 100 percent of the remuneration during the first 7 days, reduced to 85.88 percent of the remuneration from day 8 until day 14 inclusive, further reduced from day 15 until day 30 inclusive
Afterwards, the employees are entitled to disability allowances paid by the National Health Service.

Maternity/parental leave & pay

15 weeks of maternity leave with deviations in case of multiple births. During leave, allowances paid by the National Health Service (ie, 82 percent of pay for first 30 days, then 75 percent); right to return to work and protection against dismissal.

15 days of paternity leave at birth for a child born between January 1, 2021 and January 1, 2023; right to return to work and protection against dismissal. 4 months of full-time parental leave; possibility to take up part-time parental leave (1/2 or 1/5 of working time); right to return to work; protection against dismissal.

DISCRIMINATION

Characteristics protected from unlawful discrimination and harassment: age, disability, gender, marital status, religion or belief, sex or sexual orientation, political conviction, physical or genetic characteristics, language, current or future health and affiliation to trade union.

BENEFITS & PENSIONS

Currently, no benefits obligatory above those covered under social insurance contributions. Sectorial pension schemes within some joint committees. Strict legal framework with regard to complementary pension schemes.

DATA PRIVACY

Employees generally must be informed of personal data processing and, in certain cases, give prior and explicit consent. Special rules apply to data transfer outside the EEA. Significant and local-specific restrictions apply on monitoring email and internet use and use of cameras at the workplace. The personal data processing must occur in line with the General Data Protection Regulation (GDPR) and the Belgian data protection laws.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Automatic transfer under the EU Acquired Rights Directive/Collective Bargaining Agreement no. 32, in a business sale or service provision change. Significant restrictions on changing terms and conditions following a transfer. Duty to inform and consult with employee representative bodies, or, in absence of employee representative bodies, provide this information directly to employees. Any dismissal connected to the transfer is unfair unless for an economic, technical or organizational reason.

EMPLOYEE REPRESENTATION

Trade unions are prevalent. Approximately 50 percent of workers are affiliated with a trade union. Works councils must be established by social elections if the company has at least 100 employees. Committees for Prevention and Protection at Work must be established by social elections if the company has at least 50 employees. The requirements for establishing a trade union delegation are determined at sectorial level.
Industry-level collective bargaining agreements, concluded within the joint committees (ie, permanent bodies on the industry level in which an equal number of employers' federations and trade unions are represented and that have as their main task concluding industrywide collective bargaining agreements and mediating in social conflicts) are common.

**TERMINATION**

**Grounds**

In principle, no obligation to justify the dismissal, except in case of a dismissal for serious cause. However, in most circumstances, on the request of the employee, the employer must explain the dismissal on grounds which relate to the employee's work ability, their behavior at work or the employer's business necessities, or the employee may be entitled to a complementary indemnity.

A dismissal for serious cause must be implemented via a specific legal procedure and within specific legally defined timeframes.

**Employees subject to termination laws**

All.

**Prohibited or restricted terminations**

Specific protection against dismissal applies in the following circumstances: application for time credit leave; application for maternity or paternity leave, parental leave or adoption leave; formulation of observations in the register in the framework of the procedure for introducing or amending the work regulations; being a holder of or being a candidate for a political mandate; redundancy or threatened redundancy due to the introduction of new technologies; application for paid educational leave; application for leave in order to assist a person with palliative care, in order to assist a person who is suffering a serious disease or in order to take up the education of a child; request by a night worker to return to a daytime schedule; being a prevention advisor; lodging of a claim in relation to violence, harassment or sexual harassment or testifying in the framework of such a claim; lodging of a claim in relation to discrimination; appointment as union delegate; and being a candidate in the election process for the appointment of employee representatives within the works council or the committee for prevention and protection at work. Other protections against dismissal can exist on an industry level.

In case of a protection against dismissal, the employer either must prove that the grounds of dismissal are not related to the reason why the employee is protected (eg, in case of maternity leave) or must comply with a strict dismissal procedure before terminating the employment contract (eg, in case of the contemplated dismissal of a candidate or employee representative).

**Third-party approval for termination**

Required in the event of a dismissal of a candidate or employee representative in the works council or the Committee for Prevention and Protection at Work:

- In case of a dismissal for economic or technical reasons, an approval by the competent joint committee or in absence of such approval, an approval by the president of the employment tribunal is required.
• In case of a dismissal for serious cause, an approval by the president of the employment tribunal is required.

A prevention advisor may only be dismissed in case of approval by the Committee for Prevention and Protection of Work, unless the employment contract is terminated for serious cause.

**Mass layoff rules**

Strict information and consultation rules apply where 10 or more employees – depending on the total number of employees – are to be made redundant over 60 days or less and in case of a closure of an undertaking or a department thereof. Failure to comply is a criminal offense.

Specific “multiple dismissal” rules may apply at industry level.

**Notice**

The following notice periods apply in case of dismissal of an employee who entered into service after January 1, 2014:

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<th>Period of continuous service</th>
<th>Notice period</th>
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<td>Less than 3 months</td>
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<td>12 months – less than 15 months</td>
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<td>15 months – less than 18 months</td>
<td>9 weeks</td>
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<td>18 months – less than 21 months</td>
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<td>21 months – less than 24 months</td>
<td>11 weeks</td>
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<td>2 years – less than 3 years</td>
<td>12 weeks</td>
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<td>3 years – less than 4 years</td>
<td>13 weeks</td>
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<td>4 years – less than 5 years</td>
<td>15 weeks</td>
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<tr>
<td>As of 5 years</td>
<td>plus 3 weeks per commenced year of continuous service</td>
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<tr>
<td>As of 20 years</td>
<td>plus 2 weeks per commenced year of continuous service</td>
</tr>
<tr>
<td>As of 21 years</td>
<td>plus 1 week per commenced year of continuous service</td>
</tr>
</tbody>
</table>
Deviations exist within certain industry sectors (e.g., construction sector), and specific rules apply to employees who commenced employment before January 1, 2014.

No notice period to be observed in case of a dismissal for serious cause.

**Statutory right to pay in lieu of notice or garden leave**

The employer may terminate the employment contract with immediate effect, by payment of an indemnity in lieu of notice equal to the remuneration due for the notice period. Garden leave is only allowed with the employee's prior and explicit consent.

**Severance**

No general statutory severance, but clientele indemnity in case of the dismissal of a sales representative; closure indemnity, in case of the closure of an undertaking or a department of an undertaking; mobilization indemnity within the framework of a mass layoff (i.e., collective dismissal); and protection indemnity, among others.

**POST-TERMINATION RESTRAINTS**

Those that protect the employer's legitimate business interests may be enforced if reasonable.

**Non-competes**

Strict conditions, including conditions in relation to salary level, scope of application of the clause and, in some cases, duration (in principle, no longer than 12 months, except for so-called “international non-compete clauses” with a geographical scope beyond the Belgian territory). A-compete indemnity will be due equal to 1/2 of the remuneration due for the period of non-compete obligation if not explicitly waived in time by the employer, except for a non-compete in an employment contract for sales representatives.

**Customer non-solicits**

Permissible, but only enforceable if reasonable.

**Employee non-solicits**

Permissible, but only enforceable if reasonable.

**WAIVERS**

Enforceable, but employees may only sign a settlement agreement with regard to acquired rights and not with regard to future rights.

**REMEDIES**

**Discrimination**
Uncapped compensation, based on the claimant's financial loss or lump sum indemnity equal to 6 months' remuneration.

Flagrant and unreasonable dismissal

If the employer cannot motivate the dismissal of the employee on grounds related to the employee’s work ability, their behavior at work or the employer’s business necessities, and if a normal and reasonable employer would not have dismissed the employee in the case at hand, the dismissal will be considered flagrant and unreasonable. The employee will be entitled to an additional indemnity equal to between 3 and 17 weeks’ remuneration.

Failure to inform & consult

Re-employment of the employees in case of a collective dismissal (ie, mass layoff). Compensation for moral damages.

CRIMINAL SANCTIONS

Most legal dispositions with regard to labor law are subject to criminal or administrative sanctions in case of breach.

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BRAZIL

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. The official currency is the Brazilian Real (BRL). The official language is Portuguese.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity cannot hire employees in Brazil without a local corporate presence. Employers must pay social security contributions and labor charges on top of compensation, which represent an additional cost of approximately 65 percent in addition to salaries. Employees incur an income tax (up to 27.5 percent) and social security contributions (up to 11 percent of the compensation, subject to a legal cap) withheld at source from compensation.

PRE-HIRE CHECKS

Required

Immigration compliance, a valid ID and a pre-hire medical examination are required.

Permissible

Background checks for education, prior employment and basic personal information, such as proof of identity and residential address, are accepted in certain circumstances. Criminal checks are limited to certain circumstances.

IMMIGRATION

Nationals of the Mercosul (ie, Argentina, Paraguay, Uruguay, Bolivia, Chile, Colombia, Ecuador and Peru) have the right to work in Brazil. For other non-Mercosul nationals, immigration permission is likely required.

HIRING OPTIONS

Employee
Indefinite, fixed-term, full-time or part-time (intermittent).

Independent contractor

Independent contractors may be engaged directly by the company or through an entity. Engagement may be subject to misclassification exposure.

Agency worker

Agency workers are hired by temporary work agencies to render services to the temporary agencies’ clients. Agency workers are entitled to various employment rights.

**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

A written agreement is not legally required, but is common. Basic terms and conditions of employment are recorded in the employee’s booklet (Carteira de Trabalho e Previdência Social or CTPS) and in other mandatory documents upon hiring.

The eSocial system allows the company to electronically perform all procedures related to hiring. The Digital Employee’s Booklet now replaces the physical employee’s booklet (CTPS) so that, at the time of hiring, the employee only needs to inform the employer of their Individual Taxpayers’ Registry number.

**Probationary periods**

Permissible. Statutory limit of 90 days.

**Policies**

Written employment health and safety policies such as an Occupational Health Medical Control Program (PCMSO) and an Environmental Risk Prevention Program (PPRA) are legally required.

**Third-party approval**

The employment relationship with foreign employees must be submitted for the Secretary of Labor’s approval.

**LANGUAGE REQUIREMENTS**

Although not required by statute, all employment documents should be in Portuguese.

**MINIMUM EMPLOYMENT RIGHTS**

Employees entitled to minimum employment rights

All.
Working hours

As a general rule, full-time employees’ working hours cannot exceed 8 hours per day or 44 hours per week. Collective bargaining agreements may provide that the employees subject to them will work fewer than 44 hours per week. Certain types of employees are not subject to control of work hours.

Overtime

Maximum 2 hours per day. Compensation for overtime hours must exceed compensation for normal hours by at least 50 percent. Collective bargaining agreements may provide for higher amounts of overtime compensation. It is not possible to make a fixed payment in lieu of overtime.

Wages

Currently, the national minimum wage for 2022 is BRL1,212 per month. Regional minimum salaries and minimum salaries set out in collective bargaining agreements often apply and may be higher.

Vacation

Employees are entitled to remunerated vacations (30 days) for every 12-month period of work, beginning 12 months after their hiring date. The vacation payment is equivalent to 1 month's wage, plus at least 1/3 of the monthly wage. Granting of vacation is subject to specific terms and conditions set forth by law.

Sick leave & pay

The company must pay wages corresponding to the first 15 days of sick leave absence. After the 15th day of absence, the employee will be entitled to social security benefits. Collective bargaining agreements may require payments in addition to the social security benefit for a limited period.

Maternity/parental leave & pay

Women are entitled to paid maternity leave of 120 days starting on the date of their child’s birth or 28 days before such event. Adopting mothers have the same right. After the birth of a child, fathers are entitled to a paid 5-day leave.

Collective bargaining agreements may set out additional requirements.

DISCRIMINATION

Characteristics protected by statute from unlawful discrimination are gender, origin, race, color, marital status, family situation, age, pregnancy, religion and disability. Case law has also protected individuals of various sexual orientations and gender identities as well as individuals with severe illnesses from discriminatory termination.

BENEFITS & PENSIONS

All Brazilian employees must be enrolled with the Brazilian Social Security System, which provides for pension and disability benefits as well as public health coverage.
Employees must be granted transportation vouchers and benefits set out in collective bargaining agreements. The granting of meal vouchers and a private health plan is common.

DATA PRIVACY

The new General Data Protection Law (Lei Geral de Proteção de Dados or LGPD) came into force on September 18, 2021. The LGPD is Brazil’s first comprehensive data protection regulation and applies to any processing operation carried out by a natural person or a legal entity, of public or private law, irrespective of the means used for the processing, the country in which its headquarters are located or the country where the data is located, provided that:

- The processing operation is carried out in Brazil
- The purpose of the processing activity is aimed at the offering or provision of goods or services, or at the processing of data of individuals located in Brazil, or
- The personal data was collected in Brazil.

The LGPD does not contain specific employment provisions, but its provisions cover employment data.

The monitoring of corporate email and internet use is allowed, but employees should be notified that they cannot expect privacy in the use of these work tools.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

There is no obligation to notify the government before asset or share deals. There are significant restrictions on changing terms and conditions of employment.

EMPLOYEE REPRESENTATION

Union representation is mandatory, and all employees are subject to industrywide collective agreements. Works councils are uncommon. However, Law 13,467, which became effective on November 13, 2017, provides for a commission of employees for companies whose workforce exceeds 200 individuals. The number of commission employees will depend on the size of the workforce, ranging from 3 to 7 members.

TERMINATION

Grounds

As a rule, termination does not require a cause, but severance payments for terminations without cause are higher than those owed in cases of termination for cause. Certain circumstances protect employees against unmotivated dismissal. Termination by mutual agreement is allowed in certain circumstances when it is convenient for the company as well as for the employee.

Employees subject to termination laws
All employees are subject to termination laws.

**Restricted or prohibited terminations**

Certain circumstances prevent the termination of the employment relationship without cause or cause an increase in the severance payments, such as:

- Pregnancy
- Application by the employee for, or election of the employee to, a position at the Internal Commission for Accident Prevention (Comissão Interna de Prevenção de Acidentes or CIPA)
- Application by the employee or election of the employee for a management position at the employees’ union
- Work accident (an employee who suffers a work-related accident cannot be dismissed until 1 year after the illness allowance has ceased) and
- Acceptance by the employee of a position in the conciliation commission in charge of settling labor disputes.

Other events provided under collective conventions or collective agreements may lead to temporary job tenure protection.

**Third-party approval for termination**

The union may be required to participate in the termination process of employees in circumstances preventing termination per collective bargaining rules.

Since November 13, 2017, the union – or the labor authority – is no longer required to ratify terminations of employees; however, collective bargaining agreements may provide that ratification is mandatory for certain sectors.

**Mass layoff rules**

Mass layoffs do not require prior negotiation with the union.

**Notice**

Termination without cause by employer’s initiative: 30 days during the first year plus 3 days per additional year of service for the same company, limited to 90 days. Additional collective bargaining agreement provisions may apply.

Termination for cause: Not applicable, effective immediately.

**Statutory right to pay in lieu of notice or garden leave**

The company has the statutory right to pay in lieu of notice. Garden leave is not allowed.
Severance

In case of termination without cause, the employee is entitled to severance, amounting to the equivalent of 40 percent of the balance in the employee's Unemployment Guarantee Fund (Fundo de Garantia por Tempo de Serviço or FGTS), accrued during the employment relationship. Additional payments will be due, such as 1 month's salary if the termination takes place in the 30 days before the expected date of the collective bargaining agreement for the following period; payout of accrued vacation plus 1/3 vacation bonus; pro-rated 13 months' pay; and other payments required by the applicable collective bargaining agreement or contract.

In case of termination with cause, accrued unused vacation plus vacation bonus and other payments required by the applicable collective bargaining agreement or contract are still required, but there will be no FGTS payout or additional 1 month's salary.

In case of termination by mutual agreement, the company must pay half of the notice and 20 percent of the FGTS balance, as opposed to 40 percent when the termination is on the company's initiative. The employee will be allowed to withdraw 80 percent of the balance of the FGTS fund, as opposed to 100 percent when the termination is on the company's initiative, but they are not entitled to unemployment benefits in this type of termination.

POST-TERMINATION RESTRAINTS

Brazilian law does not address post-termination restraints. Therefore, enforcement of post-termination restraints may be challenging.

Non-competes

Periods of up to 24 months have been accepted, but enforceability is more likely for shorter periods (ie, 6-12 months). Case law has upheld non-competes that were limited with regards to scope, territory, timeframe and fair and reasonable payment.

Customer non-solicits

Generally permissible.

Employee non-solicits

Generally permissible, but case law is scarce in this regard.

WAIVERS

Not enforceable unless in a settlement ratified at court.

REMEDIES

Discrimination
Indemnification based on the claimant’s damages in case of a labor lawsuit, plus a recommendation that the employer takes action.

The law establishes parameters that must be observed by the judges when rendering a decision. The maximum indemnity amount cannot exceed 50 times the amount paid by the social security system benefits to the worker – the cap is BRL276,565. However, recent case law has fixed amounts above this limit as certain labor judges consider the limit for moral indemnifications unconstitutional.

Unfair dismissal

Severance in case of termination without cause in which the employee is not protected by job tenure is set out in law. In case of termination without cause, employees protected by job tenure can trigger damages and reinstatement.

Failure to inform & consult

As a rule, there is no obligation to inform and consult the union about terminations, unless so required by a collective bargaining agreement. In such cases, failure to inform triggers the consequences set out in the collective bargaining agreement.

Failure to inform and consult in mass terminations may trigger reinstatement orders and financial consequences.

CRIMINAL SANCTIONS

Violation of employment laws and discrimination can trigger criminal sanctions.

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CANADA

LEGAL SYSTEM, CURRENCY, LANGUAGE

Common law throughout the majority of the country and civil law in the province of Quebec. The official currency is the Canadian dollar (CAD). The official languages are English and French.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity may engage employees in Canada, but the entity must have proper corporate and payroll registrations. Business and corporate tax planning considerations are often paramount, and consideration should be given to creating a corporate subsidiary in Canada as an alternative to registering a foreign entity.

Payroll registration is done through the Canada Revenue Agency (and, if applicable, through Revenue Quebec) by obtaining a business number. Employers must withhold and remit income tax, as well as various social security programs such as the Canada Pension Plan (or, in Quebec, the Quebec Pension Plan) and Employment Insurance. In some cases, additional taxes and remittances may apply or be required under worker's compensation legislation and as part of the public health care system (eg, in Ontario, the Employer Health Tax).

PRE-HIRE CHECKS

Required

All employers should verify that individual employees are legally entitled to work in Canada by obtaining the employee’s Social Insurance Number (SIN), but only after a conditional offer of employment is made. Certain employers may also require criminal records checks through a Canadian Police Information Check (CPIC). In some industries, a more comprehensive check may be required by law (eg, for persons who work with vulnerable individuals such as children).

Where a criminal record check is required by the employer, the prospective employee may have grounds to claim discrimination if a decision not to hire is based on:

- A conviction of a provincial offense revealed by the check
EMPLOYMENT

A criminal offense for which a pardon has been granted or

A criminal conviction unrelated to the individual's employment.

Criminal records checks should not be done without the prospective employee's consent and, in any event, it is recommended that a conditional offer of employment be made before a criminal record check is performed.

Permissible

Verifying references, past employment and education is common and permissible, provided that:

• The applicant has consented and

• The employer conducts the verification in a consistent and non-discriminatory manner.

Caution must be exercised in undertaking more detailed background checks to ensure that the scope of the detailed background check is not excessive and that proper consent has been obtained in accordance with applicable privacy laws.

Credit checks are generally permissible when the candidate's credit history is relevant to the position (e.g., positions which involve handling money or involve financial decision making). Credit checks must be conducted in accordance with applicable consumer protection legislation, which requires that:

• Consent is obtained from the individual and

• A proper process is followed when the credit check is undertaken.

It is recommended that a conditional offer of employment is made before a credit check is performed.

IMMIGRATION

Canadian citizens and permanent residents have a right to work in Canada. For other non-Canadian nationals, a valid work permit will usually be required. The process for obtaining work permits is managed by Canada's federal government through Immigration, Refugees and Citizenship Canada and Canada Border Services Agency. There are special provisions under the United States-Mexico-Canada Agreement (USMCA) – formerly the new North American Free Trade Agreement (NAFTA) – which make it easier for certain American or Mexican professionals to obtain a work permit to work in Canada. There are also similar provisions under other international agreements or arrangements such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), Canada-European Union Comprehensive Economic and Trade Agreement (CETA), and other similar trade agreements which also make it easier for certain categories of workers from signatory countries to work in Canada. In addition, companies which have or plan to establish a branch, subsidiary or an affiliate company in Canada may transfer qualified senior managers, executives or specialized employees to the Canadian entity.

HIRING OPTIONS

Employee
Indefinite, fixed-term, full-time, part-time or casual. Employers may generally provide for differential treatment between these categories of employees; however, basic employment standards apply to all categories in most Canadian jurisdictions.

Independent contractor

Independent contractors may be engaged directly by the company or via a personal services corporation. The use of independent contractors creates misclassification exposure, which can give rise to tax, social security contribution and workers’ compensation liabilities. It may also create potential claims for overtime, vacation, holiday pay and notice of termination. Classification may be different under different statutory schemes, and care must be taken to ensure the relationship is not truly one of employer and employee.

Dependent contractor

In some Canadian jurisdictions, courts have recognized the concept of a dependent contractor, which is similar to an independent contractor except that the individual exhibits significant economic dependence on the employer. As with the use of independent contractors, the use of dependent contractors creates misclassification exposure, which may include tax, social security contribution and workers’ compensation liabilities. It may also create potential claims for overtime, vacation, holiday pay and notice of termination.

Classification may be different under different statutory schemes, and care must be taken to ensure the relationship is not truly one of employer and employee.

Agency worker

The use of agency workers is common in some industries. Certain jurisdictions in Canada have special rules intended to provide protections to agency workers and may deem the contracting company liable if the agency fails to pay wages or provide required benefits to its workers. Many statutory regimes also have a mechanism for declaring a contracting company the true employer, a co-employer or common employer under applicable legislation. Some provinces have established a licensing framework for recruiters and temporary help agencies to operate within the given provinces, and employers using agencies in these provinces should ensure that they are properly licensed.

Temporary foreign worker

Canada has a program that permits employers to hire temporary foreign workers to fill temporary labor and skills shortages when qualified Canadian citizens or permanent residents are not available.

In Canada, the authorization to hire temporary foreign workers is regulated by the Temporary Foreign Worker Program (TFWP). If the applicant does not qualify for an exemption from normal immigration requirements (typically through the International Mobility Program, or IMP), an employer will be required to obtain a Labour Market Impact Assessment (LMIA), after having met specific advertising requirements, to hire foreign workers to fill temporary and skill shortages. The LMIA confirms that the hiring of temporary foreign workers will not have a negative impact on the Canadian labor market. Some Canadian jurisdictions have statutes and regulations that apply specifically to the employment of foreign nationals working in particular industries.

EMPLOYMENT CONTRACTS & POLICIES
Employment contracts

Written employment contracts are recommended but are not required by law.

Probationary periods

In most jurisdictions, a probationary period of up to 3 months is permitted. During the probationary period, an employer may be able to terminate an employee without being required to provide statutory notice of termination or pay in lieu. Employees terminated during a probationary period may still allege discrimination in the course of employment or upon termination and recover damages if the employer is found to have discriminated against the employee. In addition, absent a clear contractual limit on an employee’s right to notice of termination during the probationary period, an employee may still have a claim for notice of termination or pay in lieu of notice at common law. In Quebec, such contractual limitation on an employee’s right to reasonable notice of termination pursuant to the Civil Code of Quebec is not permitted, and the employee may still have an entitlement to such notice during a probationary period, depending on the circumstances.

Policies

Most jurisdictions require a written health and safety policy with certain contents based on the number of employees and/or the scope of the employer’s operations. Various jurisdictions require specific training for employees on health and safety standards. Several jurisdictions require workplace violence, workplace harassment, workplace sexual harassment and/or anti-bullying policies and harassment and anti-discrimination policies are highly recommended in all jurisdictions. In Ontario, specific accessibility policies and a right to disconnect policy are required.

Accessibility policies apply not only to employees but also to interactions with the public and other third parties. Privacy policies are also required, and, in a number of jurisdictions, the privacy policy must address the protection of employee personal information.

A number of jurisdictions require the posting of information on basic employment laws and health and safety standards.

Third-party approval

Generally, there is no requirement to file employment contracts or policies or have them approved; however, in Ontario, regular compliance filings are required of most employers under accessibility legislation.

LANGUAGE REQUIREMENTS

Canada has 2 official languages: English and French. Individuals are entitled to receive certain government services in either official language. In Quebec, language laws require that all written communications to employees, including offers of employment and promotion, must be prepared in French. In some instances, this may not be necessary if the employee consents to receiving the documentation in English. In some jurisdictions, posting of basic workplace rights must be done in English and the majority language of the workplace.

In Quebec, employers are prohibited from requiring a candidate to be proficient in a language other than French in order to be qualified for a role, unless the nature of the duties requires such knowledge.
In addition to an employer’s statutory obligations, it is recommended that essential employment documents (e.g., health and safety materials) are translated into other languages if an employee or group of employees is unable to understand the contents of the document as published in English or French.

**MINIMUM EMPLOYMENT RIGHTS**

**Employees entitled to minimum employment rights**

In most cases, all employees are subject to minimum labor and employment standards legislation. However, there are a number of common exceptions to some or all of these standards based on the nature of the employee’s position or work and the employee’s qualifications. For example, professionals (e.g., lawyers and doctors) are often exempt from some or all of the minimum standards; supervisors and managers are often exempt from hours of work and overtime rules; and various jurisdictions have exemptions for IT professionals or special rules for particular industries.

**Working hours**

Daily and weekly maximums vary by jurisdiction. Standard working hours are, on average, 40 hours per week.

**Overtime**

Overtime rules vary by jurisdiction with some jurisdictions having daily overtime thresholds (often 8 hours) and others having weekly overtime thresholds (often 40 to 44 hours per week). Overtime is generally payable at 1.5 times the employee’s regular rate and, in some jurisdictions, after a certain threshold is reached, 2 times the employee’s regular rate. Overtime eligibility is not restricted to employees paid on an hourly basis. Salaried employees may also be eligible for overtime.

**Wages**

Minimum wage varies by jurisdiction. In addition, many jurisdictions have different minimum wages for certain categories of employees, such as food servers and students.

**Vacation**

Amounts and related requirements vary by jurisdiction. In many jurisdictions, vacation entitlement starts at 2 weeks of vacation time following 12 complete months of service; however, vacation pay (e.g., a corresponding 4 percent of wages) begins to accrue immediately upon the commencement of employment. In most jurisdictions, vacation entitlement increases to 3 weeks (and 6 percent vacation pay) after 3 to 5 years of service, depending on the jurisdiction. Many employers provide a greater vacation entitlement and allow vacation to be taken in the first year of employment as the vacation time accrues. "Use it or lose it" policies are not permissible in most jurisdictions.

In addition, paid time off for public/statutory holidays is also required, and certain requirements must be met if employees will work on a public/statutory holiday.

**Sick leave & pay**

Entitlements vary by jurisdiction but are generally without pay. A notable exception is British Columbia, which
provides 5 paid sick days to employees. Quebec also provides 2 days, and Prince Edward Island provides 1 day. In addition, a number of provinces have enacted paid sick days specifically related to individuals impacted by COVID-19.

Employees in most jurisdictions have rights to a certain number of days of statutorily protected but unpaid sick leave. Some jurisdictions require a certain number of sick days to be paid, while the remainder is unpaid.

Although not required to do so, many employers provide additional paid sick days as well as short- and long-term disability benefits. Employees without access to such benefits may have the right to claim Employment Insurance sick leave benefits. A number of jurisdictions also provide employees with a certain number of statutorily protected but unpaid days to deal with responsibilities in relation to a family member. Some jurisdictions require a certain number of these days to be paid, while the remainder is unpaid.

Notwithstanding applicable statutory sick leave and family responsibility entitlements, employers also have a duty to accommodate an employee on the basis of, among other things, disability and family status. Therefore, an employer may be required to permit an employee to be absent without pay for more than their statutory sick leave days.

Maternity/parental leave & pay

Entitlements differ slightly by jurisdiction. In most jurisdictions, pregnant employees have the right to take pregnancy (i.e., maternity) leave of up to 17 weeks (18 weeks in Quebec and 19 weeks in Saskatchewan) of unpaid time off work.

In addition, in most jurisdictions, new parents – whether by birth or adoption – have the right to take unpaid parental leave of between 59 and 65 weeks, depending on the jurisdiction, when a child is born or comes into their care or control for the first time. Parental leave does not need to be commenced immediately upon the birth of the child or when the child first comes into the employee’s care or control, and employees in some jurisdictions have up to 78 weeks to start the leave, while in other jurisdictions, the leave must be completed within 78 weeks. Birth mothers who have taken pregnancy leave must commence parental leave immediately after the end of the pregnancy leave in most jurisdictions, except where the child has not yet come into their care, custody or control.

Employers must generally maintain benefits for the pregnancy or parental leave; however, the employee may usually be required to pay their share of the premiums. Subject to certain narrow exemptions, employees have a right to reinstatement at the end of the leave and continue to earn credit for length of service and seniority during the leave.

An employer cannot penalize an employee in any way because the employee is or will be eligible to take a pregnancy or parental leave, or for taking or planning to take a pregnancy or parental leave.

In Quebec, birth fathers are also eligible for up to 5 weeks of unpaid paternity leave, and all employees are eligible for 5 days – 2 of which are paid days – of leave upon the birth or adoption of a child or the termination of a pregnancy.

DISCRIMINATION

All Canadian jurisdictions have legislation which prohibits harassment and discrimination based on a number of grounds. Protected grounds vary by jurisdiction, but generally include race, religion, age, disability, sex, gender
identity and gender expression, sexual orientation, national or ethnic origin, record of (criminal) offenses, marital status and family status. Employees who suffer harassment or discrimination may have a civil cause of action and/or access to a specialized tribunal or commission.

**BENEFITS & PENSIONS**

Employers are not required to provide benefits or pensions other than those provided through social security contributions (ie, Canada Pension Plan/Quebec Pension Plan and Employment Insurance regimes) and, in most jurisdictions, workers' compensation insurance. Many Canadian employers do, however, provide health and welfare benefits and some form of retirement savings program. In Quebec, employers are required to make a Registered Retirement Savings Plan available to employees through a third-party provider but are not required to contribute on behalf of the employee.

**DATA PRIVACY**

Legislative requirements vary by jurisdiction. Where privacy laws apply, personal information must only be collected with consent and may only be used for the purposes for which it was collected. In most jurisdictions, email and internet use may be monitored where notice has been given through clear employer policies.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

In most jurisdictions, legislation exists which will either:

- Require the transfer of employees as a result of a sale of a business or
- Provide that employees who accept an offer of employment with, or simply continue to be employed by, the purchaser will have their employment deemed continuous and their past service honored.

Unless a contract or collective agreement provides a right or option to claim termination amounts, employees accepting a purchaser’s offer of employment, either expressly or by continuing in employment, will not be entitled to claim termination amounts from the seller.

**EMPLOYEE REPRESENTATION**

In Canada, the level of union density continues to decline, particularly in the private sector. Unions continue to have high levels of representation in the broader public sector, especially in certain traditionally unionized industries such as automotive, construction and transportation. Many businesses have no union or other worker representation. There are no works councils. Industry-level collective bargaining agreements are rare outside of certain industries in Quebec and the construction industry.

**TERMINATION**

Grounds
Termination for cause without notice or pay in lieu is permissible, but the standard is high, often requiring gross or willful misconduct, willful neglect of duty, fraud, serious breach of applicable policies or material or repeated insubordination. Termination without cause is permissible in most jurisdictions, provided that proper notice of termination or pay in lieu and any severance entitlements are provided. If an employer reprises against an employee for exercising a statutory right under employment standards, human rights or occupational health and safety legislation, no amount of notice will make the termination lawful.

In Quebec and Nova Scotia, additional protections exist for certain employees who have acquired tenure (ie, achieved a certain length of service), and in those circumstances, termination may not be possible except for bona fide reasons, such as position elimination or lack of work.

Federally regulated employers may not terminate a non-managerial employee with at least 1 year of service without sufficient reason – generally just cause or a discontinuance of the job function. Employers are federally regulated if they operate in industries that fall within the federal government’s constitutional jurisdiction and concern matters of national interest, notably:

- Banking
- Telecommunication
- Air transport
- International and interprovincial rail and road transport Marine shipping, ferry and port services
- Radio and television Broadcasting Fisheries
- Interprovincial canals, pipelines, tunnels and bridges Grain, feed and seed mills
- Uranium mining and processing

The vast majority of employees in Canada – approximately 90 percent – are provincially regulated.

Employees entitled to termination protection

Generally, employees in Canada cannot be terminated without just cause or without proper notice or pay in lieu and severance pay, if applicable, under statute and at common/civil law. The right to reinstatement, however, is generally limited to unionized employees, employees terminated contrary to human rights legislation, employees terminated for exercising a statutory right with respect to working conditions or legislated employment standards (such as the right to a pregnancy leave) or for certain employees who both have the requisite length of service and are working in federally regulated industries or are employed in the provinces of Quebec or Nova Scotia.

Prohibited terminations

Employees may not be terminated based on a prohibited ground, for filing a harassment complaint or as an act of reprisal for asserting a statutory right with respect to working conditions or legislated employment standards.

Third-party approval for termination/termination documents
Approval is not required. However, for group terminations, notice in a prescribed form must generally be provided to the applicable Ministry of Labour and may need to be posted in the workplace (in some cases, before the termination will be effective).

**Mass layoff rules**

There are rules to be followed in the event of a mass layoff. Most jurisdictions provide for increased statutory notice or pay in lieu and/or severance pay in the event of a group termination and may require the provision of notice to a government ministry. In most jurisdictions, the threshold is 50 or more employees within a specified period. However, in some cases, the threshold is much lower (e.g., in Quebec, the threshold is more than 9 employees). There is generally not a consultation obligation; however, notice may need to be given to a governmental authority.

**Notice**

The statutorily required minimum length of notice of termination varies by jurisdiction and, for individual terminations, is based on an employee's length of service. For individual terminations, most jurisdictions limit notice of termination to 8 weeks. Significantly longer notice periods (up to 2 years or more in exceptional circumstances) may be awarded at common law unless there is a valid termination clause in an employment agreement which limits the common law entitlement. In Quebec, similar entitlements exist and generally cannot be limited by contract at the outset of the employment relationship.

**Statutory right to pay in lieu of notice or garden leave**

Pay in lieu of notice is permitted. Garden leave is becoming more common and, with appropriate care and planning, an employer may often achieve this objective for a reasonable period.

**Severance**

Eligible employees in Ontario and the federal jurisdiction are eligible for severance pay. In Ontario, eligible employees (i.e., those with 5 or more years of service who work for an employer that has a payroll in Ontario that exceeds 2.5 million per annum or are terminated as part of a group of 50 employees in a 6-month period as a result of a permanent discontinuance of all or part of the employer's business at an establishment) receive 1 week for each year of service, with partial years prorated to a maximum of 26 weeks. In the federal jurisdiction, eligible employees receive the greater of 2 days' wages per year of service or 5 days' wages.

**POST-TERMINATION RESTRAINTS**

These are difficult to enforce. Restrictions must go no further than necessary to protect the employer's legitimate business interests. Garden leave is becoming more common. In Quebec, employers cannot rely on restrictive covenants when an employee has been terminated without cause.

**Non-competes**

Will generally not be enforceable for mere employees and not where a non-solicitation provision would have been sufficient. Must be reasonable in scope geographically and temporally, and in some jurisdictions, must also specify
the type of restricted employment and the restricted job functions. Must be clear and unambiguous. A requirement not to interfere with business relationships might also be enforced if it is reasonable, clear and unambiguous.

In Ontario, employers are prohibited from entering into any agreement with an employee containing a non-competition clause, with limited exceptions for senior-level executives and in the context of a sale of a business.

**Customer non-solicits**

More likely to be enforced than a non-competition agreement, non-solicitation agreements must still be reasonable in scope geographically and temporally. Must be clear and unambiguous.

**Employee non-solicits**

Likely to be enforced if reasonable, clear and unambiguous.

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**WAIVERS**

Generally, employees may not waive or contract out of statutory rights or benefits unless they are doing so in exchange for a "greater right or benefit" with respect to the same subject matter of the right being waived.

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**REMEDIES**

**Discrimination**

In most jurisdictions, general damages for breach of the legislation, injury to dignity or mental distress may be awarded in discrimination cases in addition to lost wages and compensation for the loss of employment. Damage awards in this regard are increasing as many jurisdictions have removed legislative caps on the amounts which can be awarded. Additionally, human rights tribunals or commissions have the power to order reinstatement and other non-monetary remedies.

**Unfair dismissal**

As noted above, only certain employees in the federal jurisdiction and employees who have met certain service requirements in Quebec and Nova Scotia have this right. Damage awards may vary widely based on individual circumstances. Reinstatement is possible.

**Failure to inform & consult**

Not applicable for this jurisdiction.

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**CRIMINAL SANCTIONS**
The main areas where criminal sanctions arise are under occupational health and safety legislation and related Criminal Code provisions. Both employees and directors may be subject to criminal sanctions.

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CHILE

LEGAL SYSTEM, CURRENCY, LANGUAGE

Continental law. The official currency is the Chilean peso (CLP). The official language is Spanish.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity seeking to hire an employee in Chile does not need to have a corporate presence in Chile. However, in such case, the company must appoint a representative in Chile for the sole purpose of acting on its behalf in case of any review by the authorities of labor and social security compliance – usually a payroll provider. The representative should have power to comply with the social security obligations of the foreign company if that company does not have a Chilean tax ID.

PRE-HIRE CHECKS

Required

None. However, an immigration check is recommended to ensure the employee has the right to work legally in Chile.

Permissible

In general, employers are permitted to check education and prior employment records. Employers may check financial history, health, drug/alcohol usage and criminal records in very limited circumstances when such information is directly relevant to the position for which the candidate is considered. No background checks may be based on any status protected by the Chilean anti-discrimination statute, including checks based on union membership or political affiliation.

IMMIGRATION

Foreigners who travel to Chile on business trips do not require a special permit to do so as those activities are covered by the status of tourist. Foreigners may enter Chile for tourism purposes without a visa unless their
country demands a tourism visa for Chilean citizens, in which case a tourism visa is required to enter Chile. Any tourism entrance is limited to a maximum of 90 days, renewable in exceptional circumstances for a similar term.

Foreigners may work in Chile after obtaining a proper permit from the immigration authorities, which generally is easy to obtain.

- A permit to work as a tourist is required for individuals who render short-term services for maximum of 90 days. This permit is given for periods of 30 days and may be extended for additional periods of 30 days.

- As of 2017, InvestChile, the investment promotion authority, has put in place a special immigration program known as Visa Tech, under which a technology company may request a temporary work visa for a candidate, which is processed in no more than 15 business days. For other sectors, a relatively faster alternative is to request a visa subject to an employment agreement in a Chilean Consulate abroad, which takes approximately 30 business days to obtain.

**HIRING OPTIONS**

**Employee**

Indefinite, fixed-term or task-specific. Employees may be hired part-time (ie, up to 30 hours of work per week) or full-time.

Fixed-term employment agreements have a maximum duration of 12 months. However, this may be extended to 24 months for employees holding a technical or professional title granted by an educational institution recognized by Chile, but this alternative is almost unused in practice.

**Independent contractor**

Permissible. Chilean law authorizes companies to outsource various kinds of services, including the core business, or specific tasks, such as cleaning or canteen services. In this case, workers are dependent and subordinated to the contractor company rather than to the principal (ie, client).

If the contractor company breaches labor or social security payment obligations towards its employees (including severance compensation), the principal (ie, client) is jointly liable for them, limited to the period that workers were assigned to render services for the principal. The principal (ie, client) may mitigate against such liabilities by regularly checking compliance with employment and social security obligations.

**Agency worker**

Outside labor through personnel supply companies may only be hired for specific purposes defined by law and only for short periods of time, which vary according to the cause invoked for using agency services, such as temporary replacement of sick employees. The personnel supplier is responsible for the worker and is required to satisfy the respective social security and labor obligations. In cases where these obligations are not met, the company who has obtained the temporary worker is liable in solidum for employment obligations of the employer.

**EMPLOYMENT CONTRACTS & POLICIES**
Employment contracts

As a general rule, employment contracts must be made in writing. If the employer does not provide written terms of employment within 15 days of the employee’s start date, the law will presume the conditions alleged by the employee valid.

Individual labor contracts must contain certain provisions, including the position of the employee and description of the work to be rendered; the place of work; the remuneration to be paid by the employer; and the term of payment of the compensation, which cannot exceed monthly periods.

Although offer letters are valid in Chile, the execution by the employee does not exempt the company from providing an employment agreement with the minimum statutory provisions.

Probationary periods

Chilean law does not have regulations in relation to probationary periods. Instead, it is market practice for companies to use fixed-term employment agreements as de facto probationary periods. If an employee’s performance during the initial fixed term is satisfactory to the employer, the employer will renew the employment contract with the employee.

If, for any reason, the employee gains legal dismissal protection during the fixed term de facto probationary period, the company may not terminate the employment agreement without prior authorization of a court of law (see Restricted or Prohibited Terminations).

Policies

Companies with 10 or more employees must implement internal rules (Reglamento Interno de la Empresa).

The internal rules must cover the following mandatory issues:

- Hiring and termination of employment
- Rest periods and leaves
- Different remunerations paid by the company
- Rules regarding payment of remuneration
- Duties and prohibitions for the employees
- Rules regarding the executive staff that will handle the worker’s questions and complaints
- Rules regarding different issues in relation to the age and sex of the employees, and the rules regarding adjustments that the company may need to perform for disabled employees
- Rules regarding compliance with social security obligations, military service and Chilean ID rules on hygiene and safety in the company
- Penalties in case of infringement of the internal rules procedure to impose such penalties
• Rules regarding sexual harassment and
• Rules regarding equal remuneration between men and women.

Additionally, companies may incorporate other policies as part of the internal rules of the company.

Third-party approval

There are no regulations regarding third-party approval. However, the Labor Directorate may review the internal rules at the request of any employee or union and may request changes if it decides that any provision may be illegal.

LANGUAGE REQUIREMENTS

Documents may be drafted in any language, but pursuant to opinions of the Labor Directorate, the employee should always receive a copy translated into Spanish. A bilingual version of each document is recommended.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All.

Working hours

Normal working hours cannot exceed 45 hours per week and 10 hours per day. The 45-hour workweek cannot be spread over less than 5 days or more than 6 days. An employee is required to take a 30-minute lunch break, which is not included in working hours. Certain types of employees are not subject to working hour limitations (eg, sales staff that provides services outside the company premises, managers and teleworkers).

Overtime

A maximum of 2 hours of overtime is allowed per day. Such overtime must be paid at a rate 50-percent higher than the employee’s regular pay. Overtime must be agreed to in writing, and the agreement cannot have a duration that exceeds 3 months.

Wages

CLP326,500 (approximately USD445) is the current statutory minimum salary. Salary is payable on a monthly basis.

Chilean law provides that companies that earn profits in a fiscal year (January 1 to December 31) must share part of such profits with its personnel by distributing 30 percent of net profit, calculated in proportion to the employee’s yearly salary. The basis to determine profits is the corporate taxable income, subject to certain
adjustments, less 10 percent of net equity. However, the employer may pay a bonus of 25 percent of the yearly salary in lieu of the profit-sharing obligation. In this case, the bonus cannot exceed a maximum of the 4.75 monthly minimum wages (approximately USD2,110) regardless of the level of salary of the employee.

The company and the employees may agree on a different profit-sharing system, provided the payment to the employee is not lower than 1 of the 2 abovementioned alternatives. However, annual performance-based bonuses programs cannot be used to replace this profit-sharing obligation.

**Vacation**

Employees are entitled to 15 working days (Monday to Friday) paid vacation after 1 year of continuous employment. Employees with 10 or more years of experience receive an additional day of vacation for every subsequent 3 years of service.

**Sick leave & pay**

There is no limit to the number of sick days that employees may take. Employees are paid their normal wage through social security entities subsidies from the first day of sickness if the total number of sick days is greater than 10. When the total number of sick days is 10 or fewer, the employee receives subsidies from their 4th day of sickness only. As the subsidies are funded through employee contributions, in order to qualify, the law requires employees (among other requirements) to have paid into the system for a certain amount of time. Sick leave requires a medical certificate.

**Maternity/parental leave & pay**

Mothers receive 210 days of maternity leave paid by a government subsidy. This includes 6 weeks of pre-birth leave, 12 weeks of after-birth leave and either 12 additional weeks of leave or 18 weeks of half-time work. A portion of this final parental leave can be transferred to the other parent.

**DISCRIMINATION**

Characteristics protected from unlawful discrimination include race, color, sex, maternity, breastfeeding, age, marital status, union membership, religion, political opinion, citizenship, ethnicity, socioeconomic status, language, beliefs, participation in professional trade associations, sexual orientation, gender identity, family situation, personal appearance, illness, disability and social origin.

**BENEFITS & PENSIONS**

The employer is required to withhold from the salary the following amounts for social security purposes:

- 10 percent for retirement savings (salary capped at 81.7 UF Unidades de Fomento – approximately USD3,232)
- 7 percent for health insurance (salary capped at 81.7 UF Unidades de Fomento – approximately USD3,232)
- 0.6 percent for unemployment insurance (salary capped at 122.7 UF Unidades de Fomento – approximately USD4,855)
Contributions for retirement, disability, death and health insurance are not mandatory in the following circumstances:

- Foreign staff with technical skills or university diplomas who prove that they have protection abroad for contingencies of health, old-age retirement, disablement and death or
- Seconded workers from a country with which there is a social security treaty in force between Chile and the host country.

However, in both cases above, contributions for unemployment insurance and work accident and professional diseases insurance are still mandatory.

In addition, employers are required to contribute to a mandatory work accident and professional diseases insurance that compensates and/or protects workers when they are injured on the job or are diagnosed with occupation-related diseases. This insurance is fully funded by the company.

Employers have no legal obligation to provide fringe benefits, other than benefits which may be voluntarily agreed upon in individual or collective agreements. There is no legal obligation to provide catering facilities, meals and transportation. However, it is a common practice to pay modest allowances in compensation for such perks.

Additionally, the labor reforms that took effect in April 2017 bar employers from extending benefits negotiated as a part of collective bargaining agreement to non-union employees without obtaining the union's consent.

**DATA PRIVACY**

The employer is obliged to maintain the privacy of the information and personal data related to its employees. The right to personal data protection has the status of constitutional right, and, therefore, any breach may lead to litigation for impairment of fundamental rights.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

There is no obligation in Chile to inform unions or labor authorities of any transaction or business transfer.

Chilean law permits the transfer of all or part of a business, in which case, in principle, the new company that continues the operations will be considered the employer of the employees who work for that business. Under this scenario, the employees maintain seniority as well as all their rights and obligations under the employment agreements and practices in place with the former company, which must be honored by the new employer.

If the new company must change the employment conditions of the employees who will be transferred with the business, termination of the employment agreement by the transferring company and a new employment agreement with the new company generally are the most suitable solutions.

**EMPLOYEE REPRESENTATION**

Chile recognizes the right of "freedom of unionization," which includes the right to be part or not to be part of a
Statutes regulate the processes and procedures necessary for the formation and management of unions.

Unions only represent its members during collective bargaining and in collective claims. In order to act in particular claims of its members, the union must have a mandate given by that individual.

Unions cannot act on behalf of non-unionized staff.

There are no works councils or similar employee representative groups.

**TERMINATION**

**Grounds**

There is a rigid and detailed statutory regime for termination in Chile regulating termination with or without cause, voluntary resignations and mutual agreements, among others.

Termination with no cause is subject to restrictions. Companies have full ability to terminate employments with no cause only in the case of top managers and personnel in the sole trust of the company. For other employees, the company must show termination grounds (eg, economic needs). All employees who have been employed for at least 1 year are entitled to severance in the case of termination for no cause or on grounds of company needs. In the latter case, if the company is not in the position to demonstrate such economic needs, the termination will still be valid, but, in case of lawsuits, extra payments may be imposed by the court in addition to the severance that must be paid as a result of the termination.

The law contains provisions on for-cause terminations due to, for example, serious lack of performance, non-attendance at work or insults to the employer, and regulates voluntary resignation and termination by mutual agreement. These causes of termination do not entitle the employee to severance pay.

**Employees subject to termination laws**

All employees.

**Restricted or prohibited terminations**

Among others, pregnant women, women for up to 1 year and 12 weeks after birth of a child and union leaders cannot be terminated without prior court approval.

**Third-party approval for termination**

No third-party approval is required, except for the cases referred to above (see “Restricted or Prohibited Terminations”).

**Mass layoff rules**

There are no specific rules regarding mass layoffs.

**Notice**
30 days' notice for unilateral termination of managers and other specified employees (ie, termination with no cause – see “Grounds”). 30 days' notice for termination of any employee based on redundancy (ie, termination on grounds of company needs – see “Grounds”).

Notice is required for standard for-cause removal reasons. The notice must be handed over to the employee at the time of termination of the employment agreement or within the following 3 business days.

**Statutory right to pay in lieu of notice or garden leave**

The company has the statutory right to pay in lieu of notice.

There are no garden leave rules in Chile and, in principle, any anticipated contractual clause on that matter would be considered void.

**Severance**

If the employee has worked in a position uninterrupted for more than 1 year and is terminated with no cause or on the grounds of company needs, severance pay is equal to 30 days' remuneration for every year worked and fraction of a year over 6 months spent in the service of the same employer, capped at 330 days and at a maximum monthly remuneration of UF90 (approximately USD3,600). Employment contracts may specify more generous severance terms.

**POST-TERMINATION RESTRAINTS**

It is not against Chilean law to include post-termination restraints in an employment contract. However, because the Chilean Constitution explicitly protects an employee's right to work, courts may be unwilling to enforce such restraints.

**Non-competes**

Technically not prohibited, but may be difficult to enforce due to the constitutional protections identified above.

To date, the only post-termination non-competes accepted by the courts are those that provide compensation to the employee to compensate for the prohibition against competing. There are no clear parameters regarding the amount of the bonus and the maximum term of the non-compete – however, a maximum term of 2 years is customary.

**Customer non-solicits**

Technically not prohibited, but may be difficult to enforce due to the constitutional protections identified above. A customer non-solicit may need to rise to the level of unfair competition in order for a court to enforce the clause.

**Employee non-solicits**

Technically not prohibited, but may be difficult to enforce due to the constitutional protections identified above.

**WAIVERS**
While the employment agreement is in force, the employees cannot waive most legal rights. After the termination of employment agreements, rights can be waived by the employee, usually signing a final settlement agreement, known as "finiquito."

**REMEDIES**

**Discrimination**

Employees can file a lawsuit against the company in order to look for the cessation of the discrimination conduct and also for compensation of damages. The procedure requires from the employee to submit evidence, and in such event, the company will have to demonstrate that the disputed decision is legitimate and if applicable, that the decision was the alternative that impaired the employee’s rights the least, and that the decision is reasonable.

**Unfair dismissal**

An employee could file a claim alleging wrongful dismissal before a labor court. If the employer fails to prove that the termination was based on a reason allowed by statute and precisely outlined in the termination notice, the court will require the employer to pay additional compensation to the employee in addition to severance pay (which ranges from 30 percent to 100 percent of the severance compensation, depending on the reason for dismissal).

**Failure to inform & consult**

Not applicable for this jurisdiction.

**CRIMINAL SANCTIONS**

Not applicable for this jurisdiction.

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CHINA

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. The official currency is the Chinese Renminbi (CNY). The official language is Mandarin.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity cannot engage employees in China without setting up a representative office or a subsidiary. Once established, payroll must be set up. Note that representative offices of foreign companies must engage an agency to engage its workforce.

PRE-HIRE CHECKS

Required

Immigration compliance.

Permissible

Reference and education checks are common, even without the applicant’s consent. There is no restriction on criminal record checks.

IMMIGRATION

A work permit is required for any non-PRC-passport holder, except for Taiwan, Hong Kong and Macao residents, and a grading evaluation for expatriate employees applies. Foreign workers are categorized into 3 types: high-end foreign talents, foreign professionals and foreign employees. A quota is imposed on foreign employees who primarily engage in temporary, seasonal, non-technology or service-related work. Limitations on the number of foreign professionals are floatable to market demand, and high-end foreign talents are encouraged to work in China without any restriction on numbers.

HIRING OPTIONS
Employee

Indefinite, fixed-term, full-time or part-time. Note that, after 2 consecutive fixed-term contracts, the employee may be entitled to an indefinite-term contract.

Independent contractor

It is uncommon for independent contractors to be engaged directly. Such a relationship is likely to be considered de facto employment.

Agency worker

Labor dispatch arrangements are becoming increasingly regulated in terms of treatment of labor dispatch workers and the numbers that can be hired within a single workplace. Because of this, labor dispatch arrangements are becoming a less attractive hiring option.

The rules are more relaxed for representative offices as they cannot hire local staff directly and must therefore rely on agencies.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

A written contract in Chinese is required. If a contract is in a foreign language, a translation into Mandarin is highly recommended, and the risk of not translating the contract may be significant.

Probationary periods

PRC labor laws only allow a maximum probation period of 1 month for contracts less than 1 year, 2 months for contracts longer than 1 year but less than 3 years, and 6 months for contracts of 3 years or longer.

Policies

The absence of a disciplinary policy may make a termination based on misconduct difficult. Where an employer formulates, amends or decides rules or important events concerning issues that are directly related to the interests of the employees, such rules or important events shall be discussed at the meeting of employees' representatives or the general meeting of all employees. The employer shall also put forward proposals and opinions to the employees and negotiate with the trade union or the employees' representatives on an equal basis to reach agreements on these rules or events. In addition, the employer shall make an announcement regarding the rules and important events that are directly related to the interests of the employees or inform the employees of these rules or events.

Third-party approval

No requirement to lodge employment contract or policies with or get approval from any third party, but the employer must go through a consultation process with relevant representatives to implement and vary employment policies.
LANGUAGE REQUIREMENTS

Some cities may require a Chinese employment contract (ie, in Shanghai, an employment contract must be written in Chinese), and, if the content of the employment contract written in both Chinese and a foreign language is inconsistent, the Chinese employment contract will prevail.

If the employment contracts, policies or other documents must be submitted to the labor arbitration commission or court in China, they must be in Chinese.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All.

Working hours

40 hours per week and 8 hours per day, except in the case of a flexible working hour system and comprehensive working hour system, which requires approval from the local labor authority.

Overtime

For work in excess of the standard working hours, overtime is due; the amount ranges between 150 and 300 percent of the employee’s daily salary rate or hourly salary rate, depending on when the employee carried out the overtime.

Wages

Minimum wage stipulated by local regulations.

Vacation

Employees who have worked for 1 full year or more after graduation are entitled to 5 to 15 days’ annual leave with pay. The duration of leave for each employee is determined by reference to their accumulated years of work (with all employers, not just the current employer).

Sick leave & pay

Generally, reduced pay may be paid for sick leave days according to the local standard.

Maternity/parental leave & pay

98 days’ statutory entitlement of maternity leave. Additional maternity leave may apply, depending on location. Employees that experience a difficult childbirth receive 15 extra days. For multiple births (eg, twins or triplets), 15 extra days may be added for each child. After giving birth, female employees are entitled to 1 paid working hour per day for nursing purposes until the baby is 1 year old. Parental leave varies from 7 to 30 days, depending on location.
With the introduction of the 3-child policy and extended maternity leave policies adopted by certain regions such as Beijing, Shanghai and Zhejiang in late 2021, more local governments are required to grant additional maternity leave, paternity leave and childcare leave to female and/or male employees in 2022.

**DISCRIMINATION**

Characteristics protected from unlawful discrimination and harassment include communicable disease status, disability, migrant worker status, race, nationality, ethnicity, religion or belief and sex.

The Civil Code came into effect on January 1, 2021. The Civil Code sets out a clear definition of sexual harassment. This includes widening the scope to protect female employees, requiring employers to provide an internal mechanism for employees to lodge complaints, providing a mechanism for employees to lodge complaints with relevant government agencies and requiring employers to take reasonable efforts to prevent sexual harassment in the workplace.

**BENEFITS & PENSIONS**

Employers and employees are required to contribute to certain mandatory social insurance and housing fund schemes in China. Social insurance includes pension, medical insurance, unemployment insurance, work-related injury insurance and maternity insurance. Employers are also required to contribute to social insurance for employees who are foreigners or Hong Kong, Macau and Taiwan residents. The minimum contributions required by employers and employees are determined by the local labor and social security bureaus.

**DATA PRIVACY**

The Regulations on Employment Services and Employment Management require that an employee’s personal data is kept confidential and not made public without the employee’s consent.

The PRC Cyber Security Law imposes new security and data protection obligations on "network operators," puts restrictions on transfers of data outside China by "key information infrastructure operators" and introduces new restrictions on critical network and cybersecurity products.

The Civil Code strengthens protection on individuals' privacy and personal information. It improves the legal definition of personal information and clarifies the connotation, principles and conditions of handling personal information as well as strengthens the information security obligations of processors.

The Personal Information Protection Law (PIPL) came into effect on November 1, 2021, setting out the first comprehensive legal regime regulating the protection of personal information in China. There are requirements on notification and obtaining separate consent when collecting, processing and transferring personal information. Additional legal grounds for processing personal information in addition to the general “consent-based” approach are included in the PIPL.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**
No automatic transfer of employment in an associated company transfer or change of business ownership. Therefore, the previous employer must terminate the employee’s employment contract, and the new employer must offer – and the employee must accept – employment. If the new employer recognizes the service years with the previous employer, then the previous employer may be able to avoid liability for a severance payment.

EMPLOYEE REPRESENTATION

Trade unions are prevalent in state-owned enterprises. In most cities, local regulations require employers to set up employee representative councils (ERC). However, failure to set up an ERC is not subject to penalties. Many businesses have no union or other worker representation. Industry-level collective bargaining agreements are uncommon.

TERMINATION

Grounds

There is no at-will employment in China, and termination of employees must be for cause.

Employees subject to termination laws

All employees.

Restricted or prohibited terminations

Employees:

- Who are pregnant, on maternity leave or in the nursing period
- Who are suffering from work-related injuries or occupational diseases
- Who have been employed by the employer for more than 15 years and have less than 5 years from the statutory retirement age (60 for male employees, 55 for female employees holding office positions and 50 for female factory workers) or
- Who are on sick leave (for certain cumulative periods depending on the employee’s seniority), may not be unilaterally terminated

May not be unilaterally terminated.

Third-party approval for termination

Trade unions should be notified of any unilateral termination.

Mass layoff rules

Strict information and consultation rules apply where 20 individuals or equal to or more than 10 percent of the
The total number of employees are to be made redundant.

The employer must also notify the trade union and all employees of the redundancies and report to the local labor bureau.

**Notice**

30 days’ prior notice. Not required for misconduct cases or termination due to failure to meet the conditions of employment during the probation period.

**Statutory right to pay in lieu of notice or garden leave**

There is a statutory right to make a payment in lieu of notice. Garden leave with full pay is also permissible.

**Severance**

Severance pay is based on the number of years an employee has worked with the employer at the rate of 1 month’s wage for each year worked, rounded up to the nearest 0.5 or 1 year. The wages used for calculation during service years after 2008 are subject to a statutory cap.

**POST-TERMINATION RESTRAINTS**

Those that protect the employer’s legitimate business interests may be enforced if reasonable.

**Non-competes**

No more than 2 years. Compensation is required per local rules.

**Customer non-solicits**

Permissible, but relatively difficult to enforce.

**Employee non-solicits**

Permissible, but relatively difficult to enforce.

**WAIVERS**

Enforceable to waive contractual rights. While an employee may be asked to waive statutory rights, there is some uncertainty as to whether such a waiver would be effective to prevent an employee from subsequently bringing a claim for statutory rights.

**REMEDIES**

Discrimination
Correction, apology, moral damages, compensation for direct losses.

**Unfair dismissal**

The Court or Labor Tribunal may make an order for reinstatement or double statutory severance pay.

**Failure to inform & consult**

May be deemed as illegal dismissal.

**CRIMINAL SANCTIONS**

Limited circumstances, such as failure to pay salary in bad faith, may result in criminal sanctions.

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COLOMBIA

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. The official currency is the Colombian Peso (COP). The official language is Spanish.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

In principle, to comply with social security obligations, a foreign entity cannot directly engage employees in Colombia without setting up a branch or subsidiary. Proper payroll registrations are required for both employer and employees. Social security (in respect of health, pension and labor risks, see “Benefits and pensions”), payroll taxes and union contribution withholdings may apply if employees are unionized, and withholding tax may apply depending on the employee’s income.

PRE-HIRE CHECKS

Required

1. Immigration
2. Education degree or qualification that demonstrates professional, technological, technical or specialist training (applies to regulated professions). Where a candidate completed study abroad, their degree or qualification must be validated by the Ministry of Education.
3. Current professional card or registration in Colombia (if applicable): Colombia has regulated professions which require permits. Regulated professions include engineering, law and accounting, among others.
4. Onboarding medical examination: This certifies the suitability of the candidate to perform their duties for the employer.

Permissible

Pre-employment background checks are permitted, and it is common to use specialized companies for these services (ie, third-party validations of background checks).

Background checks may include educational history and professional qualifications, employment history, consumer credit checks, civil litigation, criminal and fiscal records, OFAC/Global Sanctions Lists, a driver’s license check and
passport/ID validation, among others.

On the initiation of the recruitment process, the applicant must grant express written consent to conduct background checks.

Under Colombian law, there are few restrictions on an employer’s right to request substantiating documents and to confirm the information provided by the applicant (e.g., regarding health conditions, pregnancy, drug use, family situations and political tendency).

**IMMIGRATION**

A foreign national needs a temporary visa or immigration permit authorizing them to live and work in Colombia. Work visas in Colombia (i.e., a Migrant Visa or a Visitor Visa with a work permit) are granted for up to 3 years in the case of the Migrant Visa and for up to 2 years in the case of the Visitor Visa on a discretionary basis and are renewable indefinitely.

After 5 years of holding a Migrant Visa, it is possible to apply for a residency visa. The general rule is that applicant themselves must file the visa application before the Ministry of Foreign Affairs in Bogotá, Colombia or before a Colombian Consulate abroad. However, if the process is conducted before the Ministry of Foreign Affairs in Colombia, it is possible to file the visa application through a proxy.

Other visa alternatives may be available depending on the activities to be performed in Colombia by a foreign national or their personal situation.

Additionally, the government has issued special permits that allow Venezuelan nationals to work in Colombia.

**HIRING OPTIONS**

**Employee**

Indefinite, fixed-term or for the duration of a project.

Fixed-term agreements cannot exceed 3 years but may be extended indefinitely. If the duration of the contract is less than 1 year, it can be extended 3 times (with each renewal equal to or less than the initial term) but, after the third renewal, the contract may only be extended for periods of 1 year.

Additionally, employees may be hired for face-to-face work, telecommuting (allowing hybrid work) and remote work.

**Independent contractor**

Independent contractors may be engaged. Specific rules regarding direction and control, subordination and autonomy in how they perform the work must be followed in order to reduce misclassification exposure. Independent contractors are obliged to pay social security contributions monthly in arrears.

**Agency worker**
Staffing agencies or "temporary services agencies" are entities that provide services to third-party beneficiaries to temporarily assist in the development of their activities via individuals hired directly by the staffing agency. The agency acts as the individual's employer.

Agency workers may only be hired in 3 cases:

- For occasional or sporadic activities
- For replacement of employees on vacation, maternity or sick leave, or
- To support production increases, for a period of up to 6 months, which is extendable for 1 further period of 6 months after which the employer must either terminate the engagement or hire the worker directly.

If none of these scenarios apply, the company receiving services from the agency may be considered the employer of the agency workers and/or may be subject to monetary sanctions including a fine of up to 5,000 times the minimum monthly wages which may be imposed by the Ministry of Labor.

**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

Written employment agreements are mandatory for fixed-term agreements, telecommuting and remote work. However, written employment agreements are generally recommended.

**Probationary periods**

Employees hired under an indefinite employment agreement may be subject to a probationary period of up to 2 months. Employees hired under a fixed-term employment agreement may be subject to a probationary period of up to 1/5 of the fixed term agreed upon up to 2 months.

**Policies**

Depending on the number of employees, the following policies will be mandatory:

- Internal regulations (*Reglamento Interno de Trabajo* or *RIT*) are mandatory under Article 105 of Colombian Labor Code for employers with more than 5 permanent employees in commercial business, more than 10 employees in industrial companies or more than 20 employees in agricultural, forestry or cattle

- Health and safety regulations (*Reglamento de Seguridad y Salud en el Trabajo*) are mandatory under article 349 of Colombian Labor Code for employers with more than 10 permanent employees.

- An occupational health and safety management system (*Sistema de Gestión de Seguridad y Salud en el Trabajo*) and labor harassment and data privacy policies are Additional corporate policies are permitted.

- A biosafety protocol, in accordance with Resolution 777 of 2021 issued by the Ministry of Health which requires employers to comply with the general biosafety protocols to mitigate and control COVID-19 at the workplace.
• Data privacy policy is mandatory, regardless of the headcount.

• Disconnection labor policy is mandatory, regardless of the headcount.

• Companies that own, manufacture, assemble, sell, hire or manage fleets of motor vehicles of more than 10 units, or engage or manage drivers, must implement a strategic road safety plan.

**Third-party approval**

Generally, no approvals are required, with the exception of employees who are 15 to 17 years old, in which case authorization of the employment relationship from the Ministry of Labor is required.

**LANGUAGE REQUIREMENTS**

No statutory requirements. However, Spanish is recommended as the Colombian authorities require any employment document to be in Spanish or translated into Spanish.

**MINIMUM EMPLOYMENT RIGHTS**

**Employees entitled to minimum employment rights**

All.

**Working hours**

Up to 48 hours a week. Employees must have at least 1 paid day off every 6 days (usually Sundays). The Colombian Labor Code allows employees to work 48 hours per week distributed over 5 days in order to also have all Saturdays as days of rest.

The Colombian Congress approved a bill whereby the weekly working hours will gradually decrease within the next 5 years. The bill gradually reduces the maximum weekly working hours to 42 per week, without reducing salary or affecting employees’ rights. Nevertheless, employers may reduce the weekly working hours before the deadlines set forth by law. The reduction of the working schedule shall be implemented by the employers as follows:

<table>
<thead>
<tr>
<th>Maximum implementation date</th>
<th>Maximum weekly working hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 15, 2023</td>
<td>47</td>
</tr>
<tr>
<td>July 15, 2024</td>
<td>46</td>
</tr>
</tbody>
</table>
Special shifts are permitted according to the needs of the company.

**Overtime**

An employee may not be required to work more than 2 hours per day as overtime or more than 12 hours in a given week. The ordinary working day is from 6:00 am to 9:00 pm. Overtime during the day is paid at a rate of 25 percent on top of the ordinary hourly rate. The working night is from 9:00 pm to 6:00 am; workers who ordinarily work during these hours must be paid 35 percent on top of the ordinary hourly rate. Overtime pay for night work is equivalent to 75 percent on top of the ordinary hourly rate.

Employers must have a special permit from the Ministry of Labor for overtime work.

Employees who perform functions of direction, trust or management as well as employees who are engaged in intermittent activities or in activities of simple vigilance (eg, security guards), provided they stay at the workplace, are excluded from the above rules regarding the maximum workday and overtime.

**Wages**

The minimum wage is determined by the Colombian government every calendar year. The minimum wage for 2022 is COP1 million (approximately USD250) per month. The minimum wage is increased annually using the Consumer Price Index (IPC) as a reference.

Salaries in Colombia may be agreed under the ordinary or integrated salary scheme.

Employees under the ordinary salary scheme are entitled to the following mandatory fringe benefits and payments in addition to the monthly remuneration:

- **Severance aid.** Equivalent to 30 days of salary for every year of service, proportionally for fractions of a year.

- **Interest on severance.** Equivalent to 12 percent of the severance payment per year, proportionally for fractions of a year.

- **June and December service bonus.** Equivalent to 15 days’ salary, payable to the employee every calendar year. The first payment must be made on the last day of June, and the second payment must be made within the first 20 days of December, in proportion to the time worked during the respective calendar semester.

- **Vacation.** 15 working days of vacation for every year of service.

- **Work clothes.** 3 times a year (ie, April, August and December) to employees who earn less than twice the
The ordinary salary scheme is mandatory for salaries below 13 times the monthly minimum wage (COP13 million for 2022). If the proposed salary is equal or higher to that amount, an integrated salary scheme may be agreed.

The monthly integrated salary includes the legal, social or fringe benefits provided to employees, except for vacations (employees are entitled to 15 business days of vacation per year). This includes the following:

- Severance aid (auxilio de cesantías)
- Interest on severance aid (intereses a las cesantías)
- Legal service bonuses and extra-legal bonuses
- Any type of surcharge Sunday and holiday surcharge and days off
- Night work surcharge
- Subsidies and in-kind supplies
- Travel allowances, within the Colombian territory or abroad Bonuses of all types and natures
- In general, all benefits that an employee receives in money or in kind, either regularly or sporadically, except for vacation

The minimum monthly integrated salary must be equivalent to at least 13 times the minimum wage.

Vacation

The employee is entitled to 15 business days of vacation per year, proportional to the fraction of a year.

Sick leave & pay

If an employee cannot work due to illness or an accident, a medical authorization from a Colombian Social Security entity must be obtained in order for the employee to get paid for the days during which the employee could not attend work. The employer pays sick leave during the employee’s absence (for an indefinite period) but, as from the third day of sick leave, the employer can claim the payment back from the social security system.

Moreover, employees are entitled to paid leave of 10 working days per year to care for minors suffering a terminal illness or condition. The leave must be agreed with the employer and may be taken by the father, mother or whoever has custody and care of the minor. An employer may seek reimbursement for the payment to the employee during leave from the healthcare social security system.

Maternity/parental leave & pay
Paid maternity leave for every employed pregnant or adoptive mother in Colombia is granted for 18 weeks. Mothers are entitled to 1 week before childbirth and 17 weeks after. For medical reasons the mother can have 2 weeks before childbirth or can have the 2 weeks before childbirth postpartum, which means that the maternity leave will last 18 weeks after childbirth. Adoptive mothers, and fathers in charge of the newborn in case of sickness or death of the mother, are also entitled to this maternity leave.

A male employee is given 2 weeks of paid paternity leave when his spouse or significant other gives birth or he adopts a child. The Law sets forth that for every 1% point that the national unemployment rate decreases, paternity leave will be extended for 1 additional week. The extension of paternity leave will be maximum 5 weeks. The methodology to calculate unemployment rate will be jointly defined and published in December every year by the Ministry of Finance and Public Credit, the Colombian Central Bank, and the National Planning Department.

Shared parental leave: Parents may freely distribute or share between them the last 6 weeks of maternity leave.

Flexible part-time parental leave: Parents may choose to exchange a period of their leave for a part-time work period, equivalent to twice the time corresponding to the chosen period.

**DISCRIMINATION**

Employers may not discriminate against employees or job candidates on the basis of age, ethnic origin/race, gender, citizenship, disability, health conditions, religion, opinions, sexual orientation, marital status, union membership, or any other criteria.

**BENEFITS & PENSIONS**

Employees in Colombia must be enrolled in the social security system (for pension, health and labor risks), and employers have the obligation to make the corresponding monthly contributions on time.

If foreign employees are covered by the pension system in their home country, they are not obligated to be enrolled in the pension system or to pay monthly contributions to the Colombian pension system.

Social security contributions and payroll taxes must be paid as follows:

<table>
<thead>
<tr>
<th>Contributions ¹</th>
<th>Rate</th>
<th>Employer</th>
<th>Employee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pension</td>
<td>16 percent</td>
<td>12 percent</td>
<td>4 percent</td>
</tr>
<tr>
<td>Health</td>
<td>12.5 percent</td>
<td>8.5 percent for employees who earn more than 10 minimum wages.</td>
<td>4 percent</td>
</tr>
<tr>
<td>Solidarity pension Fund</td>
<td>1 to 2 percent</td>
<td>N/A</td>
<td>1 to 2 percent</td>
</tr>
<tr>
<td>Professional Risks ²</td>
<td>0.348 to 8.7 percent</td>
<td>0.348 to 8.7 percent</td>
<td>N/A</td>
</tr>
<tr>
<td>Payroll Taxes&lt;sup&gt;3&lt;/sup&gt;</td>
<td>4 percent or 9 percent depending on whether employees earn more than 10 minimum wages.</td>
<td>4 percent or 9 percent depending on whether employees earn more than 10 minimum wages.</td>
<td>N/A</td>
</tr>
</tbody>
</table>

1. The basis to calculate contributions to the social security system (pensions, solidarity pension fund, health and professional risks) is the ordinary monthly salary earned by the employee. However, if the monthly salary exceeds 25 times the minimum wage (COP $25,000,000, approximately USD $6,610, for 2022), contributions to the social security system will be calculated on the maximum basis of 25 times the minimum wage. Non-salary payments agreed between the employer and the employee are not included in the basis to calculate social security contributions, if such payments do not exceed 40 percent of the employee’s compensation. If these non-salary payments exceed 40 percent, the difference will be subject to social security contributions.

2. The contribution to the Solidarity Pension Fund only applies for employees who earn more than 4 times the legal minimum wage. This payment is equivalent to 1 percent of the monthly salary, but in the case of employees earning more than 16 times the minimum wage, the rate is increased as follows: between 16 and 17 times the minimum wage, an extra 0.2 percent; between 17 and 18 times the minimum wage, an extra 0.4 percent; between 18 and 19 times the minimum wage, an extra 0.6 percent; between 19 to 20 times the minimum wage, an extra 0.8 percent; and between 20 and 25 times the minimum wage, an extra 1 percent. Contributions to the solidarity fund also have the cap of 25 times the minimum wage.

3. Contributions to SENA, ICBF, Family Compensation Fund (payroll taxes) shall be calculated based on the ordinary monthly salary earned by the employee, including any paid rest, such as vacation. For employees who earn less than 10 times the minimum wage, contributions to ICBF and SENA do not apply. In case of employees earning integral salary, 70 percent of salary is the basis for this contribution. Non-salary payments are excluded from payroll taxes. Payroll taxes do not have a ceiling.
To process personal data, data controllers must provide a privacy notice to the affected employees prior to the collection and processing of personal data. In the case of data transfers, the privacy notice must contain the name of the transferee or the person to whom the information is transferred. All transfers of personal data to domestic or foreign third parties must be pre-approved by the data subject/employee.

Employees have the right to know, update and correct their personal data. This right may be exercised in relation to partial, inaccurate, incomplete, split or deceptive data, and/or data that is prohibited from or not authorized for processing, such as race or ethnic origin, political orientation, religious or philosophical orientation and enrollment to unions or social organizations, among other items considered sensitive information.

Employees may revoke the authorization granted for the processing of their personal data and may request to remove their personal information from the employers or subcontractor’s databases by filing a formal claim, save for information directly related to their employment (e.g., HR core data, recruitment, performance, global compensation learning and training-related data and master data). This possibility is only applicable in the case of wrongful use of the employee’s information.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

Employment transfers may be implemented via employer substitution or the assignment of employment agreements, or by termination and rehire. Employees transferred by substitution or assignment are entitled to receive at least the same benefits and to perform their work subject to the same terms and conditions as before the transfer. The employer who has been substituted is jointly responsible with the new employer as to the labor obligations arising prior to the employer substitution.

An employer substitution occurs, regardless of the will of the parties, when the following 3 criteria are met:

- Change of employer (for any reason)
- Continuity of establishment (understood as the core business of seller) and
- Continuity of employment agreement.

**EMPLOYEE REPRESENTATION**

Trade unions are prevalent in certain sectors, including the sugar, railway, automotive, oil and mining industries as well as the public sector, especially education and energy.

A minimum of 25 workers is required to maintain or establish a trade union in Colombia. So, where the company employs at least 25 employees, the employees may establish a company-level union. Only the employees may form a union.

There are no work councils or other employee representatives.

**TERMINATION**

Grounds
An employer may terminate their employment relationship with an employee without incurring liability if any of the justified causes established by law exist, which are mostly based on misconduct or poor performance. A disciplinary process should be conducted before any termination with cause. Terminations without cause are also valid but will trigger severance obligations. In a dismissal not for cause, no notice is required, but the employee is entitled to compensation (ie, indemnification) for unilateral termination as set out below.

**Employees subject to termination laws**

All employees.

**Restricted or prohibited terminations**

There are special cases where it is not possible to terminate an employment agreement without the authorization of the Ministry of Labor or a Labor Judge, even with just cause:

- Maternity: Employees who are pregnant or on maternity leave cannot be dismissed without just cause and without previous authorization from the Ministry of Labor.

- Paternity: Employees whose partner is pregnant or on maternity leave cannot be dismissed without just cause and without previous authorization from the Ministry of Labor.

- Health conditions: Employees who are on sick leave or have restrictions that substantially limit their ability to complete their labor duties cannot be dismissed without just cause. No authorization is needed for termination with just cause.

- Pre-pensioner: Employees who are less than 3 years away from meeting the requirements to obtain a retirement pension cannot be dismissed without just cause. No authorization is needed for termination with just cause.

- Union protection (*fuero sindical*): For union leaders, a labor judge must authorize the termination, and only for just causes established in the Colombian Labor Code and the company’s policies and/or procedures.

- Temporary collective bargaining protection (*fuero circunstancial*): During collective bargaining, an employer may not terminate a unionized employee without cause. No authorization is needed for terminations with just cause.

**Third-party approval for termination/termination documents**

Third-party approval is required for restricted or prohibited terminations.

No third-party approval is required in other cases, but it is common to have employees sign a labor settlement in before the labor authorities (ie, the Ministry of Labor or Labor Judge).

**Mass layoff rules**

Depending on the number of employment agreements to be terminated, prior authorization from the Ministry of Labor may be required. This should take 2 months. However, the Ministry generally takes much longer.
If the requirement for a collective dismissal (i.e., mass redundancy) is met (see threshold triggers below), the above authorization is mandatory. If the company does not have such authorization, the terminations shall be void by operation of law and the company will be obliged to re-engage the employees.

Simultaneously, the employer must notify its employees in writing regarding the authorization requested before the Ministry of Labor.

A collective dismissal occurs when it affects in a period of 6 months:

- In a company employing between 10 and 50 employees, 30 percent of employees
- In a company employing between 50 and 100 employees, 20 percent of employees
- In a company employing between 100 and 200 employees, 15 percent of employees
- In a company employing between 200 and 500 employees, 9 percent of employees
- In a company employing between 500 and 1,000 employees, 7 percent of employees, and
- In a company of more than 1,000 employees, 5 percent of employees.

**Notice**

At least 15 days’ written notice is required in cases of poor performance. In cases of misconduct or termination without cause, no notice is required, and such terminations may be effective immediately.

For employees with a fixed-term agreement, written notice is required at least 30 days prior to the agreement’s expiration.

The law sets forth that employees who acquire a retirement pension by the Colombian Social Security System may be terminated with cause with a notice of at least 3 months. Nevertheless, judicial precedent has ruled that notice has been set in order to prevent any interruption between retirement and payment of the pension.

**Statutory right to pay in lieu of notice or garden leave**

Not applicable under Colombian Law.

**Severance**

Unilateral termination without cause is lawful but will trigger severance obligations.

If the termination is unilateral and without cause, the employee is entitled to receive an indemnification in addition to the final wages. For employees with an indefinite-term agreement, such indemnification would be calculated as follows:

- For employees earning less than 10 minimum legal monthly wages (COP10 million – approximately USD2,500 – for 2022), compensation is 30 days of salary for the first year of service and 20 days of salary for each additional year of service (proportional to the fraction of a year).
• For employees earning 10 minimum legal wages or more, compensation is 20 days of salary for the first year of service and 15 days of salary for each additional year of service (proportional to the fraction of a year).

• For employees with a fixed-term agreement, severance is equal to the salary owed to the employee until the term of the agreement expires.

• For employees who entered into agreements for the duration of a project, severance is the estimated salary owed to the employee until the project concludes. However, in no case may severance be less than 15 days of salary.

POST-TERMINATION RESTRAINTS

Non-competes

Post-termination non-compete clauses or agreements are not enforceable. However, such provisions are typically included in employment agreements because they can have a deterrent effect or create a sense of moral obligation on the part of an employee.

Customer non-solicits

Post-termination customer non-solicits clauses or agreements are not enforceable. However, such provisions are typically included in employment agreements because they may have a deterrent effect or create a sense of moral obligation on the part of an employee.

Employee non-solicits

Post-termination employee non-solicits clauses or agreements are not enforceable. However, such provisions are typically included in employment agreements because they may have a deterrent effect or create a sense of moral obligation on the part of an employee.

WAIVERS

Enforceable and advisable through a labor settlement before a Labor Judge or the Ministry of Labor. However, employees cannot waive their vested mandatory benefits or rights.

REMEDIES

Discrimination

No specific sanctions are in place.

Unfair dismissal

Employees are entitled to receive an indemnification in addition to the final wages. Such indemnification is calculated as follows:
For employees on indefinite employment agreements earning less than 10 minimum legal monthly wages (COP10 million – approximately USD2,500 – for 2022), the compensation is 30 days of salary for the first year of service and 20 days of salary for each additional year of service (proportional to the fraction of a year).

For employees on indefinite employment agreements earning 10 minimum legal wages or more, the compensation is 20 days of salary for the first year of service and 15 days of salary for each additional year of service (proportional to the fraction of a year).

For employees under fixed-term employment agreements, the labor indemnification is the equivalent to the pending payments between the effective date of termination and the date of termination agreed under the agreement.

For employees who entered into agreements for the duration of a project, the severance is the estimated salary owed to the employee until the project concludes. However, in no case may it be less than 15 days of salary.

Failure to inform & consult

Not applicable under Colombian law.

CRIMINAL SANCTIONS

Employees may be subject to criminal sanctions if they do not honor their non-disclosure or confidentiality agreements.

Employers may be subject to criminal sanctions if they perform actions to reduce enrollment to unions or to discourage such enrollment.

KEY CONTACTS

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Partner
DLA Piper Martinez Beltran
dzuleta@dlapipermb.com
CZECH REPUBLIC

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of the European Union. The official currency is the Czech Crown (CZK). The official language is Czech.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Foreign entities may engage employees in the Czech Republic if they have proper registrations with the competent financial authority, social security administration and health insurance company. The registered entity must pay income tax (15 percent and 23 percent for income over 4 times the average salary in Czech Republic, deducted from the employee's gross salary), health insurance (4.5 percent paid by the employee and deducted from the gross salary; in addition, another 9 percent is paid by the employer in addition to the standard gross salary) and social security contributions (6.5 percent paid by the employee and deducted from the gross salary; in addition, another 24.8 percent is paid by the employer in addition to the standard gross salary). An employee with a gross income over CZK1,867,728 is not subject of social security contributions. Employers are obliged to maintain a payroll.

Independent contractors are responsible for their own taxation.

PRE-HIRE CHECKS

Required

Immigration compliance. Entry health check. Where required by law, criminal record check or pregnancy information (eg, where certain work cannot be performed by a pregnant employee).

Permissible

Reference and education checks are common and permissible. Criminal records and credit reference checks may be requested if justified by the specific nature of the work performed and subject to the proportionality principle. Subject to the same conditions, the employer may also request information concerning pregnancy, financial and family affairs of the applicant.
IMMIGRATION

Nationals of the EU, EEA and Switzerland enjoy the right to work in the Czech Republic; however, employers must notify the relevant labor authority. Nationals of any other country must typically obtain a residence/work permit. Employers who look to employ non-EU/EEA/Swiss employees must notify the relevant labor authority and comply with the given procedure.

HIRING OPTIONS

Employee

Indefinite, fixed-term, full-time or part-time. Part-time employment must be individually agreed with the employee. There are several limitations on fixed-term employment relationships (ie, maximum 3 years and 2 renewals, subject to certain exceptions). Part-time and fixed-term employees have the right not to be discriminated against on the basis of such status.

Independent contractor

Independent contractors may be engaged. Such an engagement may be subject to the risk of exposure for misclassification (so-called "illegal work") if the given relationship has signs of dependent work.

Agency worker

Agency employees have a right to treatment that is equal to other employees in relation to pay and other employment terms.

Other options

Under Czech law, there are 2 other employment options based on either an "agreement on work performance" or an "agreement on work activity."

- Agreement on work performance: maximum 300 hours per calendar year; more flexibility, especially in relation to the termination procedure; less administratively burdensome; social and health insurance contributions payable only from certain remuneration thresholds.

- Agreement on work activity: hours worked must not exceed, on average, 1/2 of regular working hours (approximately 20 hours per week); more flexibility, especially in relation to the termination procedure; less administratively burdensome; social and health insurance contributions payable only from certain remuneration thresholds.

EMPLOYMENT CONTRACTS & POLICIES

Requirements

Obligatory written employment contract. It must include:
• Type of work
• Place of performance of work and
• Date of commencement of work.

Certain additional information must be provided to the employee in writing within 1 month from commencement of employment if not included in the employment contract.

Probationary

Permissible; maximum 3 months for regular employees and maximum 6 months for so-called managerial employees. Cannot be renewed and cannot be longer than 1/2 of the duration of a fixed-term employment. Must be agreed to in writing.

Policies

There is no mandatory policy which must be issued by the employer. An employer may issue internal policies to provide employees with rights and benefits above the mandatory provision of the Labor Code. Internal policies must be in writing. A work code is a special type of internal policy to specify the obligations of employees.

Third-party approval

Labor Union consent is required with issuance or modification of the work code.

LANGUAGE REQUIREMENTS

No statutory language requirement, except for posted workers for whom it is required to maintain a copy of an employment contract translated into either the Czech or Slovak languages at the workplace for both the posting employer and the employer to whom the employee has been posted.

However, all documents must be comprehensible to the employee to whom they are addressed (ie, language may be determined on a case-by-case basis). Works council, trade unions or other similar employees’ representatives usually require all communication to be in Czech.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All.

Working hours

Standard regular working time is 40 hours per week with limited statutory exceptions. Rules on rest breaks, night work and rest periods between shifts apply.

Overtime
Some limits on the extent of overtime to be performed by employees. The employer may request overtime only up to 150 hours per calendar year. Parties may agree to overtime of up to 416 hours per calendar year if the average overtime in 26 consecutive weeks (52 if stipulated in a collective agreement) does not exceed 8 hours per week.

Obligation to provide salary plus premium or time off for overtime. Option to include future overtime in the employee’s salary (up to 150 hours per calendar year for regular employees and up to 416 hours per calendar year for managerial employees).

Wages
As of January 1, 2022, the base rate of the minimum wage is CZK16,200 per month, or CZK96.40 an hour.

Vacation
Statutory minimum of 4 weeks per calendar year, excluding public holidays.

Sick leave & pay
Statutory sick leave and pay, subject to participation in the social security scheme and additional obligations. During the first 14 days of sickness, the employee is entitled to salary compensation (60 percent of average earnings with certain reduction factors) from the employer. After this period, sick leave is funded from the social security system.

Maternity/parental leave & pay
Maternity leave of 28 weeks (37 weeks for multiple births), paid within the state social security system for the entire duration of maternity leave at the rate of approximately 70 percent of daily salary, subject to certain reduction factors. Protection against termination.

Paternity leave of 1 week within 6 weeks after the birth of the child, paid within the state social security system for the entire duration of paternity leave at the rate of approximately 70 percent of daily salary, subject to certain reduction factors.

Parental leave available for women after the end of maternity leave as well as for men after childbirth, until the child reaches the age of 3 (duration to be determined by employees). Parental pay, as a part of state social security system, available until the child reaches the age of 4 in a total sum of up to CZK300,000, and CZK450,000 for, for example, twins or triplets. Protection against termination.

DISCRIMINATION
Direct and indirect discrimination, harassment and sexual harassment, victimization, incitement of discrimination and instruction to discriminate are prohibited. Employers are under a duty to make reasonable adjustments for persons with disabilities.

Protected characteristics include race, ethnic origin, nationality, sex (including pregnancy, maternity, paternity and sexual identification), sexual orientation, age, disability, religion, belief and worldviews.
BENEFITS & PENSIONS

Obligatory state pension insurance scheme, part of the state social security system. No additional benefits required.

DATA PRIVACY

Generally, employees must be notified of personal data processing (eg, camera recordings) and, in certain limited cases, give their consent (eg, for use of the employee’s personal data for marketing purposes). Significant restrictions on monitoring employees, including email and internet use.

The Czech Republic is subject to the General Data Protection Regulation (GDPR). The local law implementing the GDPR was issued in 2019.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Automatic transfer under the Transfer of Undertakings Directive 2001/23/EC and the Czech Labor Code where there is a transfer of an employer’s activities or tasks, or part thereof. Duty to inform and consult with employees and employee representatives. Protection of employees against significant deterioration of working conditions (ie, significant restrictions on changing terms of employment following transfer and rights to claim severance pay in case of deterioration). Employees cannot be dismissed by virtue of a transfer.

EMPLOYEE REPRESENTATION

Czech labor law recognizes several types of employee representatives: trade unions, works councils and occupational health and safety representatives. Trade unions are most common; 12 percent of employees are union members. Many businesses have no union or other worker representation.

TERMINATION

Grounds

Termination with notice permissible on the following grounds: organizational change (ie, dissolution, relocation or other redundancy), incapability (ie, ill health, failure to meet conditions or unsatisfactory performance), misconduct and breach of obligation to remain at home during sick leave.

Immediate dismissal permissible on the grounds of criminal conduct and gross misconduct.

Employees subject to termination laws

All, except employees working based on an agreement on work performance and an agreement on work activity who have a more flexible termination procedure.

Prohibited or restricted terminations
Protection against termination for certain employees and in certain circumstances (e.g., sick leave, military exercise, discharge of public office, pregnancy, maternity or parental leave). Certain statutory exceptions apply.

**Third-party approval for termination/termination documents**

If the employee is a trade union representative of a recognized union, the trade union's consent to the termination – on notice or immediate – is required.

**Mass layoff rules**

Mandatory consultation rules apply where the threshold number of employees will be made redundant over a 30-day period for organizational reasons. The thresholds are 10 employees if the employer has 20 to 100 employees; 10 percent of employees if the employer has 101 to 300 employees; and 30 employees if the employer has more than 300 employees. Obligatory notification must be given to the relevant labor authority and to the employee representative bodies.

**Notice**

Statutory minimum notice period of 2 months for both employee and employer. Notice period may be extended via agreement of the parties; this must be the same for employer and employee. No notice required in case of termination during probationary period and immediate dismissal.

**Statutory right to pay in lieu of notice or garden leave**

No unilateral right to pay in lieu of notice, but payment in lieu of notice may be agreed to in a termination agreement. Garden leave is not expressly regulated but is increasingly common.

**Severance**

Payable to all employees depending on the length of employment (1 times average monthly earnings if employment lasted less than 1 year; 2 times average monthly earnings if employment lasted at least 1 year; 3 times average monthly earnings if employment exceeded 2 years), provided that termination occurred on organizational grounds. If termination occurs due to an accident at work or occupational disease of the employee, 12 times average monthly earnings is owed. More generous terms are possible.

**POST-TERMINATION RESTRAINTS**

Only non-compete clauses are regulated by Czech law. Enforceability of other restrictive covenants is uncertain but should be permissible if reasonable, proportionate and tailored to the situation of the particular employee. Garden leave is not expressly regulated but increasingly common.

**Non-competes**

Permissible subject to compliance with statutory conditions (i.e., maximum duration of 1 year, obligatory compensation of a minimum of 1⁄2 of average earnings per month, justifiability given the position of the employee and must be in written form).

**Customer non-solicits**
Not regulated. Enforceability is uncertain but should be permissible if reasonable, proportionate and tailored to the situation of the particular employee.

**Employee non-solicits**

Not regulated. Enforceability is uncertain but should be permissible if reasonable, proportionate and tailored to the situation of the particular employee.

**WAIVERS**

Waivers of rights stemming from employment law provisions are legally ineffective.

**REMEDIES**

**Discrimination**

Right to request that the discriminatory conduct is halted, that its consequences are removed and the right to appropriate compensation, including uncapped monetary compensation. The amount of compensation is assessed in respect to the seriousness of the damage caused and the particular circumstances of the case.

**Unfair dismissal**

Right to bring an action to challenge the validity of such a dismissal; a statutory time limit of 2 months applies. If upheld by court, the employee remains employed with the company and is entitled to salary compensation for a specified time period. The salary compensation may be capped to 6 times the average monthly wage by the court with view of particular circumstances of the case.

**Failure to inform & consult**

The State Labor Inspection Office may impose a penalty on the employer, up to CZK200,000, for failure to inform or consult.

**CRIMINAL SANCTIONS**

Illegal employment of foreigners may, under limited circumstances, constitute a criminal offense, as could avoiding tax and health and social security payments.
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DENMARK

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of the EU and required to implement relevant EU Directives. The official currency is the Danish kroner (DKK). The official language is Danish.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Foreign companies that are contemplating carrying out business in Denmark may be set up as limited liability companies (A/S and ApS), branch offices or representation offices. In addition, foreign companies may hire individual employees without having a permanent establishment in Denmark. Special payroll and tax schemes may be set up in this regard.

Danish employers are obliged to withhold provisional income tax (so-called A tax) and labor market contributions from the salary paid.

PRE-HIRE CHECKS

Required

Employers are responsible for ensuring that all employees have a valid residence and work permit when employing third-country citizens. The responsibility applies to both paid and voluntary work.

Permissible

An employer may ask a potential employee to produce a copy of their criminal record if this is considered necessary and proportionate in relation to the job. Information on a potential employee's health may be requested only if this is of significant importance to the ability to perform the job in question. With regard to educational background and activities, data from the application may, as a rule, be verified by the employer. It is common in Denmark to issue job references. Applicants may be asked to provide contact data of former employers. Credit checks are allowed in relation to employees in special fiduciary positions and if there is a legitimate purpose for the check.
IMMIGRATION

Citizens from the Nordic countries, the European Union (EU), the European Economic Area (EEA) and Switzerland are entitled to live and work in Denmark. However, if the employee is an EU/EEA or Swiss citizen and intends to reside in Denmark for more than 3 months, the employee must apply for a registration certificate at the International Citizen Service or the State Administration upon arrival in Denmark.

If the employee is a citizen of a country outside the EU/EEA or Switzerland, the employee must apply for a residence and work permit before entering Denmark.

HIRING OPTIONS

Employee

Indefinite, fixed-term, full-time, part-time or freelance (with employee status). Part-time and fixed-term employees may not be discriminated against on the basis of such status. White-collar workers are typically covered by the Danish Salaried Employees Act.

Independent contractor

May be engaged directly by the company or via a personal services company. Danish courts examine the reality of the engagement in assessing whether an independent contractor has been misclassified and is actually an employee and therefore covered by the Danish employment law protection.

Agency worker

Permissible. Must receive minimum pay and benefits corresponding to what they would have received had they been directly employed by the end user.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

Employees working more than 8 hours per week on an average basis and employed for more than 1 month are entitled to receive a written statement of employment terms (ie, statement of employment terms, employment contract or the like) containing all material terms and conditions of the employment, which must be issued within 1 month of the date of commencement of the employment.

However, it is recommended that an employment contract is issued to all employees.

Probationary periods

Permissible and fairly common; however, no longer than 3 months for salaried employees.

Policies
Many businesses have an employee manual or similar document containing internal guidelines and rules on health, safety and other relevant areas. Such policies are generally not mandatory. However, it is mandatory to have a non-smoking policy and a policy on e-cigarettes.

Third-party approval

Not required for employment contracts or policies.

**LANGUAGE REQUIREMENTS**

In general, there are no statutory language requirements, and employment contracts may be provided in any relevant language provided that the individual employee understands the language of the contract. However, special rules do apply with regard to stock options. In this case, legislation requires the central terms of a stock option scheme to be provided to employees in Danish.

**MINIMUM EMPLOYMENT RIGHTS**

Employees entitled to minimum employment rights

Most employment legislation sets out mandatory rules with regard to employment terms which may not be derogated from to the detriment of the employee. Most of these mandatory rules apply to all employees regardless of, for example, length of service.

**Working hours**

The maximum average working hours according to the Working Time Directive Act are 48 hours per week, which are calculated as an average over any period of 4 months. A general working week for a Danish employee is 5 days, working typically an average of 37.5 hours per week exclusive of a daily lunch break.

The Working Environment Act contains provisions stating that working hours are to be organized to allow a period of rest of at least 11 consecutive hours within every 24-hour period. Furthermore, it provides that employees are to have a weekly 24-hour period off, which must be immediately connected to a daily rest period. The weekly 24-hour period off must, if possible, take place on Sunday.

**Overtime**

Overtime is not regulated by law except as provided by the Working Time Directive. However, overtime and the payment thereof are very often regulated in collective agreements.

**Wages**

In Denmark, there is no statutory regulation on national or sectoral minimum salary or wages. However, collective agreements often contain several provisions regarding salary or wages.

**Vacation**

A new Holiday Act came into force on September 1, 2020 with transitional provisions as from 2019.
The new Holiday Act has introduced concurrent holiday, meaning that every employee may take paid holiday as soon as the holiday has been accrued.

The employee accrues 2.08 days of holiday for each month of employment – accordingly, 25 days of paid holiday per year. The holiday year runs from September 1 to August 31 of the following year. The period in which the accrued holiday may be taken is equal to the holiday year plus 4 months (ie, from September 1 to December 31 the following year) – in total, 16 months.

**Sick leave & pay**

All employees are entitled to absence during sickness. Most collective agreements and the Danish Salaried Employees Act contain provisions ensuring that employees are entitled to full salary during sickness. If an employee is not entitled to receive pay during sickness from the employer, the employer may be obliged to pay compensation equivalent to the authorities’ sickness benefits for the first 30 days. After the 30-day period, the authorities continue to pay the sickness benefit.

After a consecutive period of absence of 30 days due to sickness, the employer may be reimbursed for a certain amount of sickness benefits by the authorities if the employer pays salary during an employee's sickness period and the sickness lasts for more than 30 days.

**Maternity/parental leave & pay**

As a part of the implementation of the Directive (EU) 2019/1158 on work-life balance for parents and careers as well as the repealing of Council Directive 2010/18/EU, the Danish government has entered into a political agreement concerning equality of maternity rights between parents and earmarked parental leave. The Danish government will submit bills for the Directive to be implemented no later than August 2, 2022.

The Directive is intended to promote equality between men and women in the labor market by granting fathers earmarked parental leave. Another measure that can be expected to be implemented in 2022 is a right to care leave of 5 days per year per employee, while also ensuring employment protection against dismissal during the leave. The below stated regulation is therefore expected to be modified during 2022.

A pregnant employee is entitled to absence from work from the beginning of a 4-week period preceding the expected date of birth. After childbirth, the mother is entitled to 14 weeks of maternity leave with the first 2 weeks being mandatory leave.

Female employees covered by the Danish Salaried Employees Act are entitled to 50 percent of their salary (including the value of benefits) from the employer for a period from 4 weeks before the expected date of birth until 14 weeks after the actual date of birth. This is the only legal obligation for the employer to pay salary during maternity leave.

It is common in Denmark under collective agreements, and under some individual agreements, that employees are entitled to full pay from the employer for a certain period during maternity leave.

After the child is born, the father (or partner of the mother) is entitled to 2 consecutive weeks of unpaid paternity leave, which must be taken during the 14 weeks of maternity leave or as otherwise agreed with the employer. The employer is not required to pay salary, but it is common for collective agreements, and some individual agreements, to provide for full salary for some or all of the paternity leave. The employee may be entitled to a state benefit.
After the 14th week following childbirth, the parents each have a right to parental leave of 32 weeks, which may be extended by up to 14 weeks. The parents may choose whether to take the parental leave at the same time or consecutively until the child reaches the age of 9. In the absence of an agreement with the employer regarding salary during parental leave, employees are entitled to state benefits for a total of 32 weeks.

The same rights (with certain modifications) apply to adoptive parents and same-sex parents. Note, however, that adoptive parents can only take leave if the state decides that 1 or both parents must stay at home to take care of the child.

**DISCRIMINATION**

Danish legislation prohibits both direct and indirect discrimination, and victimization and harassment, on various grounds, including age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity/paternity, race, nationality, religion or belief, and sex or sexual orientation.

Employers may take positive action in the form of differential treatment if an employee with a disability is employed. In that case, the employer is obliged to take adequate measures to address the person’s disadvantage in order for the person to overcome that disadvantage and function on an equal basis with other employees.

**BENEFITS & PENSIONS**

All employees must pay tax and labor market contributions, which are deducted from the employee’s gross salary. These deductions fund state benefits.

There is a mandatory Danish Labor Market Supplementary Pension (ATP) to which an employer pays DKK 189.35 per month for full-time employees and employees pay DKK 94.65 per month. There is no requirement to contribute to additional pension schemes unless this requirement is specified in a collective agreement, individual employment contract or imposed by the employer’s internal guidelines.

**DATA PRIVACY**

Employers must comply with the General Data Protection Regulation (GDPR) as of May 25, 2018 as well as the Danish Data Protection Act.

Employees have the right to detailed information about the processing of their data. All information provided must be concise, transparent, easily accessible and in plain language. Employers must provide information on the legal basis for processing and, if the data is sensitive, which of the conditions for processing special categories of personal data on which the employer relies. The notice must also advise the employees of their rights under the GDPR.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

Under the Danish Act on Employees’ Rights, in the event of Transfers of Undertakings, employees’ contracts of employment transfer automatically in the event of a business transfer or service provision change.
There are certain requirements for employers to inform and consult with their employees prior to a transfer.

Dismissals due to the transfer of an undertaking, or part thereof, will not be considered reasonably justified unless the dismissal is due to economic, technical or organizational reasons entailing changes in the workforce.

**EMPLOYEE REPRESENTATION**

Denmark is characterized by a high level of unionization, and there is a broad acceptance that the parties of the Danish labor market regulate and govern the labor market without any, or only minimal, government intervention.

Therefore, it is left to the organizations to conclude collective agreements that regulate working conditions in individual workplaces. Collective agreements regulate areas such as salary, overtime payment, working hours, pension, termination of employment, supplementary training or education and other terms of employment.

All employers with more than 35 employees are legally obliged to establish an employee forum (i.e., a works council). The forum may be used to inform employees of matters of material importance to the employees. However, several collective agreements contain provisions enabling employees – or management – to request the establishment of a works council. In this case, the terms of the collective agreement apply, provided it meets the minimum statutory requirements. The works council must consist of an equal number of employee and management representatives.

Employees may also elect members to the board of directors, provided that 35 employees or more are employed, and that a majority of them request representation in the board of directors.

**TERMINATION**

**Grounds**

In general, terminations are permissible on fair grounds. No legislation regulates discipline procedures. In many cases, dismissal with or without notice will be deemed unfair if the dismissal is due to circumstances connected to the employee (e.g., due to performance issues) and the employer has not presented the employee with a prior written warning.

**Employees subject to termination laws**

Employees not covered by the Danish Salaried Employees Act (or covered by the Danish Salaried Employees Act, but have been employed for less than 12 months) or not covered by a collective agreement have no legal protection against unfair dismissal. The majority of collective bargaining agreements include provisions protecting employees against unfair dismissal.

**Prohibited or restricted terminations**

The legal regime governing employment relationships in Denmark is generally more liberal and favorable towards the employer than in many other EU countries. However, certain employees, such as safety and employee representatives, shop stewards, pregnant employees or employees on maternity, paternity or parental leave, are subject to special protection in relation to termination of employment. An employer must comply with specific
regulations which aim to protect such employees in the event that the employer intends to terminate the employment of such an employee.

In 2019, the EU passed the Whistleblower Protection Directive, which had a deadline of December 17, 2021 for Member States to incorporate into their national laws. The Directive provides for minimum standards that must be adopted, including protections for covered individuals who report a breach of EU law in any prescribed area. An individual who meets the conditions for protection under the Directive is safeguarded from any form of retaliation, as well as from threats of or attempt at retaliation (which is defined broadly). EU Member States are in various stages of implementation. See DLA Piper EU Whistleblower Directive: Implementation Tracker for more information.

**Third-party approval for termination/termination documents**

Generally not required.

**Mass layoff rules**

Statutory rules apply to reductions in staff contemplated by employers employing more than 20 persons for reasons which are not related to the individual employees concerned and where the number of terminated employees within 30 days exceed the following limits:

- A minimum of 10 percent of the workforce in companies which normally employ 100 to 299 persons
- A minimum of 10 workers in companies which normally employ 21 to 99 persons and
- A minimum of 30 workers in companies which normally employ a minimum of 300 persons.

**Notice**

The length of the notice depends on an individual employment agreement or collective bargaining agreement. However, salaried employees are entitled to receive 1 month's notice in the first 6 months of employment, and then between 3 and 6 months' notice, based on the length of service.

An employer may dismiss an employee without notice (i.e., summary dismissal) where the employee is guilty of behavior which amounts to serious misconduct.

**Statutory right to pay in lieu of notice or garden leave**

There is no statutory right for an employer to pay in lieu of notice, but an employer has the right to put the employee on garden leave for the duration of the notice period.

If the employee is on garden leave, the employer may, with certain limitations, reduce the salary paid during the notice period if the employee finds new employment.

**Severance**

A salaried employee who has been continuously employed for 12 or 17 years is entitled to severance pay corresponding to 1 or 3 months' salary, respectively, in the event of the employer’s termination of the
POST-TERMINATION RESTRAINTS

Non-competes

Under the Danish Act on Restrictive Covenants that entered into force on January 1, 2016, an employee may be subject to a non-competition clause only if they hold a special position of trust, and the clause must indicate the specific circumstances as to why such a clause is necessary.

The compensation is either 40 percent or 60 percent of the monthly salary at the time of termination of the employment, and the first 2 months are considered minimum compensation. The compensation – save for the minimum compensation – may be reduced to 16 percent or 24 percent if the employee gets another suitable job.

For agreements entered into prior to January 1, 2016, a salaried employee may only be subject to a non-competition clause if they hold a trusted position (e.g., if they have access to certain, otherwise restricted, information).

Customer non-solicits

After January 1, 2016, an employee may only be subject to a non-solicitation clause regarding customers and business connections with whom the employee has had business relations over the last 12 months immediately prior to termination of the employment. The compensation regime which applies for non-competes also applies to customer non-solicits.

Employee non-solicits

Since January 1, 2016, new rules have reduced employers’ ability to use non-poaching and non-solicitation of employees’ clauses and it is no longer legal to enter into these clauses except in connection with a business transfer. Pre-existing clauses were only valid until January 1, 2021.

WAIVERS

In general, waivers of rights and settlement agreements are enforceable, provided that the terms and conditions are fair and balanced; however, the employee is not bound by agreed terms and conditions deviating from mandatory employment law legislation, in which case a waiver by the employee is not enforceable.

REMEDIES

A whistleblower must not be subject to retaliatory measures, including threats or attempts at retaliatory measures, because the whistleblower has made an internal or external report or made a publication in accordance with the relevant rules of the Whistleblower Protection Act.

If a whistleblower has been subject to retaliatory measures because the whistleblower has made a report or been prevented/attempted to prevent a reporting, the whistleblower is entitled to compensation.
Non-compliance with the Act may also lead to criminal sanctions.

**Discrimination**

If the employer is held liable for discrimination or harassment, the employee is entitled to compensation from the employer or potential employer. The compensation is not equivalent to the employee's loss; its characteristic is more of a penalty.

In some cases, the employee is entitled to re-instatement. However, it is very rare that the courts award re-instatement. The most common remedy in discrimination and harassment cases is financial compensation.

If discrimination is related to recruitment, the compensation ranges from DKK10,000 to DKK25,000. In the event of termination of employment on discriminatory grounds, the compensation ranges from 3 to 12 months' salary depending on the severity of the discrimination and the employee's seniority.

**Unfair dismissal**

A salaried employee who is unfairly dismissed, and who has been employed for at least 1 year at the time of dismissal, may be entitled to severance pay. The maximum amount payable is 50 percent of the salary in the statutory notice period. However, if the employee is over the age of 30, the potential severance pay is increased to an amount equal to 3 months' salary. If the employee has been employed for at least 10 years, the severance pay may be increased to a maximum of 4 months' salary. The amount payable is further increased to 6 months' salary if the employee has been employed for at least 15 years. The level of the severance can be settled between the parties or set by the Danish courts.

**Failure to inform & consult**

**Mass layoffs**

Non-compliance with the provisions of the Danish Act on Collective Redundancies may lead to a fine on the employer and compensation of between 30 days' and 8 weeks' salary to the employees made redundant, if they do not receive pay during a notice period of equivalent duration.

Different compensation, penalties, penal sanctions and consequences may be provided for by collective agreement.

**Transfer of undertakings**

Failure to comply with any of the information and consultation requirements may result in the offending employer being subject to a fine or penalty under an applicable collective agreement.

However, if the employer can prove that special circumstances applied, which means that it was not reasonably practical to comply with these requirements and that the employer took such steps to comply as were possible in the circumstances, the employer may avoid a fine or penalty. Sanctions for non-compliance with the requirements of a collective agreement may include a penalty in the order of DKK100,000 to DKK500,000 or higher.

**CRIMINAL SANCTIONS**

Non-compliance with employment law may lead to criminal sanctions. Examples include employing a person
without a valid work permit, failing to report and pay holiday pay, reading private emails, disclosure of trade secrets, breach of anti-discrimination provisions and failure to inform and consult in relation to collective redundancies, or business transfers.

Apart from fines relating to a breach of the rules on work permits and to the lack of reporting and paying of holiday pay, criminal sanctions related to employment legislation are rarely seen.

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FINLAND

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of the European Union (EU), so required to implement relevant EU directives. The official currency is the Euro (EUR). The official languages are Finnish and Swedish.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Foreign entities may engage employees in Finland subject to business and corporate tax planning considerations, as well as compliance with payroll, tax and other requirements.

Proper payroll operations include making income tax, social security and other necessary deductions at source.

PRE-HIRE CHECKS

Required

Under the Employer Sanction Directive and the Finnish Employment Contract Act, employers are required to ensure that non-European Economic Area nationals comply with residency and immigration requirements, or the employer may face fines for non-compliance. Criminal records must be checked when working with children.

Permissible

For tasks other than working with children, credit history and criminal records may be checked only in situations where the law so requires and by following the procedure stipulated in law. Medical checks may be used to check employees’ ability to work. Reference and education checks are common and carried out with the applicant’s consent.

IMMIGRATION

Nationals of the EU countries, as well as nationals of countries that belong to the European Economic Area, may work in Finland without a residence permit. Other nationals must have a residence permit or visa to be allowed to work in Finland.
HIRING OPTIONS

Employee

Unless otherwise agreed, an employment contract is valid until further notice. An employment agreement may either be full-time or part-time. If justified reasons exist, an employment agreement may also be fixed-term.

Independent contractor

Independent contractors typically work under a business name or through a company. Independent contractors are not considered to be in an employment relationship, but there’s a risk of an employment relationship if the independent contractor actually works under the supervision and control of the employing company.

Agency worker

Agency workers are commonly engaged under fixed-term contracts, but there must be a justified reason for using a fixed-term contract. Employees must be treated equally, and temporary employment is not a reason to discriminate against agency workers. Some collective bargaining agreements (CBA) limit the use of agency workers in the line of business in question. The CBA applicable to the employment terms of agency workers is typically the CBA applied by the user.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

An employment contract may be oral, written or in an electronic form. The terms are defined by the actual relationship between the employer and the employee. As a minimum, the principal terms of employment stipulated in the Employment Contracts Act must be provided in writing. Employment terms may also be established through practice between the employer and the employee.

Probationary periods

Probationary periods are permitted. The employer must agree on the probationary period with the employee. As of January 1, 2017, the maximum duration of such a period is 6 months, and it may be extended in accordance with certain limitations if the employee is on sick leave or on family leave during the probationary period.

CBAs may provide for a shorter period. In fixed-term contracts, the probationary period may be half the contract period, but in any event, no more than 6 months.

Policies

The employer is required to maintain a mandatory equality policy including pay survey and a non-discrimination policy if there are more than 30 employees employed regularly. The equality policy must include a "pay survey" with details of the employment of women and men in different jobs and a classification of jobs performed by women and men, the pay for those jobs and the differences in pay. The policy must be updated every second year and kept at the employees’ disposal. In addition, the Act on Co-operation within Undertakings requires that the employer has certain plans, such as a personnel development plan, as stipulated in the Act.
Third-party approval

No requirements for third-party approval for employment contracts or policies, except for employees under the age of 15.

LANGUAGE REQUIREMENTS

Finland’s official languages are Finnish and Swedish. However, employment contracts may be in another language understood by the employee.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All employees are entitled to minimum employment rights under statute. Generally binding CBAs in place across most sectors also specify minimum employment conditions. Employers that do not belong to an employers’ association with a CBA must still observe the minimum collective conditions for their sector. In general, managers in leading positions in the company are often excluded from the scope of a CBA, but only the managing directors, as agents of the company, are excluded from the scope of employment laws.

Working hours

Working hours are specified by the Working Hours Act or under the relevant CBA. Regular working hours are typically 7.5 or 8 hours per day and 37.5 to 40 hours per week. The Working Hours Act and CBAs also allow for different working-hour arrangements and stipulate mandatory rest periods.

Overtime

Employees may work both additional hours and overtime. Overtime requires the employee’s separate consent each time. The working time of an employee, including overtime, must not exceed an average of 48 hours per week over a 4-month period.

According to the Working Hours Act, overtime is compensated with additional pay unless it is agreed the employee will be compensated with time off. Daily overtime is work that exceeds 8 hours in a day; for daily overtime, the first 2 hours are paid with a 50-percent increase on normal salary and any hours thereafter with a 100-percent increase. Weekly overtime is work done on the employee’s normal day off that exceeds 40 hours in that week; for weekly overtime, all hours are paid with a 50-percent increase on normal salary. CBAs may include different provisions regarding overtime compensation.

Wages

There is no national minimum wage in Finland. Minimum wages are specified in the relevant CBA, if applicable. Otherwise, wages must be "reasonable."

Vacation

An employee who works at least 14 days or 35 hours a month is entitled to paid annual holiday time. An
employee is entitled to 2.5 weekdays of holiday for each full holiday credit month. However, the entitlement is 2 weekdays of holiday for each full holiday credit month if the employment relationship has been uninterrupted for a period of less than 1 year by the end of the holiday credit year (the period from April 1 to March inclusive).

When the number of holidays is calculated, any fraction of a day is rounded up to constitute 1 full day of holiday. Full annual holiday entitlement covers 4 weeks of summer holiday and 1 week of winter holiday. CBAs may include more favorable vacation entitlements.

An employee who works less than 14 days or 35 hours a month is not entitled to any holiday for that month. An employee who, in accordance with their contract, works less than 14 days or 35 hours during all calendar months is, during the employment relationship, entitled to 2 weekdays of leave for each calendar month in which the employment relationship has been in force. The employee is entitled to receive as holiday compensation 9 to 11.5 percent of their pay for their time at work during the holiday credit year.

**Sick leave & pay**

Employees are entitled to paid sick leave if they are prevented from performing their work due to an illness or an accident.

The relevant rate of sick pay is specified under the Employment Contracts Act and/or in the relevant CBA. Based on the Employment Contracts Act, employees are entitled to full pay for the period of disability up to the end of the 9th day following the date of falling ill, subject to this entitlement ceasing at the point at which the employee’s right to national sickness allowance under the Sickness Insurance Act comes into effect. In employment relationships that have continued for less than 1 month, employees are correspondingly entitled to 50 percent of their pay. CBAs typically include more agreeable sick pay entitlements.

**Maternity/parental leave & pay**

Maternity leave begins 30 to 50 working days or about 5 to 8 weeks before the expected time of birth. However, work is allowed during maternity leave if it can be done without endangering the safety of the mother, fetus or child. The minimum period of maternity leave is 4 weeks (ie, 2 weeks before the expected time of birth and 2 weeks after giving birth). The maximum period of maternity leave amounts to 105 working days. The period of paternity leave lasts for a maximum of 54 days. 158 working days of parental leave may be shared between the mother and the father. An employer is not required to pay the employee salary during family leave unless otherwise agreed in the applicable CBA. Employees who adopt a child are entitled to the same leave as parents of a biological child.

Family leave reforms will come into force on August 1, 2022. The reforms will give both parents a quota of 160 daily allowance days. Parents will be allowed to transfer up to 63 daily allowance days of their own quota to the other parent, the other custodian, their spouse or the spouse of the other parent. For the last stage of pregnancy, there will be a pregnancy allowance period of 40 daily allowance days. There will be 6 daily allowance days per week. Altogether, daily allowance days will amount to more than 14 months. Single parents will have the right to use the quotas of both parents. Twins, triplets and other multiple-births are an exception to the model; the quota of daily allowance days for such parents is increased by 84 daily allowance days per second child and every child thereafter. Parents in employment relationships will have the right to split the leave up to 4 parts. Only pregnancy allowance days will have to be used in a single continuous period, starting 14 to 30 days before the estimated due date.
DISCRIMINATION

All employees have the right to equal treatment. Employers must not discriminate on the basis of gender, descent, ethnic or national origin, nationality, religion, age, health, disability, political activity, trade union activity or related reasons. The provisions are set out in the Equality Act and the Non-Discrimination Act. All employees, including applicants, are protected against discrimination.

BENEFITS & PENSIONS

A statutory and mandatory earnings-related pension scheme accrues pension for all employees who are at least age 17 (as of 2017). Additional collective pension scheme rights may be agreed upon in a CBA. Collective and individual additional pension schemes are also possible, either where unilaterally provided by the employer or agreed contractually as a term of employment.

Employees are often entitled to fringe benefits, such as lunch, mobile phone or car benefits.

DATA PRIVACY

Employees must usually be notified about personal data processing and give consent to this when necessary. Only necessary data may be processed. Special rules apply to data transfers outside of the EEA. There are significant restrictions on monitoring email and internet use.

From May 2018, Finland has been subject to the General Data Protection Regulation (GDPR) which introduced significant new obligations and onerous sanctions for employers.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

The Employment Contracts Act stipulates that, on the transfer of an undertaking, existing employees transfer on their existing employment terms. The Act on Co-operation within Undertakings stipulates information obligations as regards to the personnel. Employees cannot be dismissed merely because of a business transfer, and dismissals or change of employment terms are possible only on normal grounds after the transfer. Employees or unions cannot object or prevent the transfer, but an employee who is affected by the business transfer is entitled to resign with a shorter notice period. A share sale is not considered a transfer of undertaking.

EMPLOYEE REPRESENTATION

Trade unions are prevalent across all sectors, and 70 percent of Finnish employees are members of a trade union. Employees may be represented either by a shop steward elected based on the applicable CBA or by a representative elected based on the Employment Contracts Act, as well as an industrial safety delegate in occupational health and safety matters. Employers must negotiate or consult with employee representatives, or the whole workforce if there are no representatives. There are no national works councils, and trade unions do not have a general right to information and/or consultation or co-determination rights. Employees do not have the right to participate in any management body of the employer.
TERMINATION

Grounds

Employers are not allowed to terminate an indefinite employment contract without a proper and weighty reason as referred to in the Employment Contracts Act, such as serious breach or neglect of obligations or economic, production-related or reorganizational reasons.

Employees subject to termination laws

All employees under the Employment Contracts Act are protected.

Restricted or prohibited terminations

The employment of a shop steward, an elected representative or an industrial safety delegate may be terminated due to redundancy only if the work of the representative in question ceases completely and the employer is unable either to arrange work that corresponds to the person’s professional skill or is otherwise suitable, or is unable to train the person for other work.

The employer can terminate the employment contract of an employee on maternity, special maternity, paternity, parental or child care leave due to redundancy only if its operations cease completely.

Third-party approval for termination/termination documents

No third-party approval required. However, if a shop steward’s, elected representative’s or health and safety representative’s employment is terminated on personal grounds, the majority of employees who are eligible to vote for the person must approve the termination.

Mass layoff rules

A formal and heavily sanctioned consultation process must be followed in case of mass redundancies as set out in the Act on Co-operation within Undertakings, if the employer regularly employs at least 20 employees. Furthermore, the Employment Contracts Act imposes some obligations to the employer (eg, obligations to offer work, training and rehire) regardless of the number of employees.

Notice

In general, the length of the notice period depends on the length of the employment. Unless otherwise agreed in the applicable CBA or employment contract, notice periods according to the Employment Contracts Act are as follows:

- 14 days if the employment has continued for up to 1 year
- 1 month if the employment has continued for more than 1 year but no more than 4 years
- 2 months if the employment relationship has continued for more than 4 years but no more than 8 years
4 months if the employment relationship has continued for more than 8 years but no more than 12 years

6 months if the employment relationship has continued for more than 12 years

Statutory right to pay in lieu of notice or garden leave

No statutory right to pay in lieu of notice. Payment in lieu of notice requires an agreement with the employee. However, employees may be unilaterally placed on garden leave.

Severance

No statutory right to severance payment, although severance may be agreed upon in the employment contract. Termination agreements are also allowed.

POST-TERMINATION RESTRAINTS

Non-competition

According to the Employment Contracts Act, a post-termination non-competition obligation is possible for a particularly weighty reason related to the operations of the employer or to the employment relationship. The obligation may limit the employee's right to conclude an employment contract with a competing employer, as well as the employee's right to engage in competing operations on their own account for a maximum of 1 year. The restriction concerning length of the obligation is not applied to employees who, in view of their duties and status, are deemed to be engaged in the direction of the company, corporate body or an independent part thereof.

On November 10, 2021, the Finnish Parliament approved a change to the Employment Contracts Act concerning non-competition agreements. As of January 1, 2022, employers have an obligation to pay compensation to employees for the period of the non-competition restriction after the employment. The compensation shall equal to 40 percent of the employee’s regular salary if the restriction period is up to 6 months and 60 percent of the employee’s regular salary (for the full period) if the restriction period is longer than 6 months. The compensation will be payable during the non-competition restriction period on the employer’s regular pay days. The payment schedule can be mutually agreed otherwise after termination of the employment. The employer will be allowed to terminate the non-competition agreement during the employment relationship without specific grounds – but not after the employee has resigned. The applicable notice period will be 1/3 of the agreed non-competition restriction period, or a minimum of 2 months. A shorter notice period can be mutually agreed only after the employee has resigned.

The changes apply to non-competition agreements under the Employment Contracts Act and employees in an employment relationship, including management.

A 1-year transition period applies, during which time employers can make the necessary changes and terminate unnecessary non-competition agreements agreed before the new law entered into force. Consequently, the changes to the law will apply to existing non-competes from January 1, 2023 onwards. The obligation to compensate does not apply to non-competes of at least 6 months that have been fully or partially compensated for prior to January 2022.

Non-solicitation
Non-solicitation of customers or employees is not regulated by the law. However, such covenants are possible and common. According to case law, such covenants are comparable to non-competition obligations and are therefore subject to the same requirements.

Confidentiality

Post-termination confidentiality clauses are not regulated in the law, but such covenants are common.

WAIVERS

A waiver of rights is possible only in exit or settlement agreements and only to a certain extent. An employee cannot waive mandatory minimum rights provided by the employment laws.

REMEDIES

Discrimination

Should the employer fail to comply with provisions on gender equality, the employer may be ordered to pay an indemnity to the affected employee, the amount of which is reset every 3 years. Since 2018, the minimum amount of the indemnity has been EUR3,620, and in connection with recruitment, the maximum amount is EUR18,130. In the event the employer fails to comply with the Non-Discrimination Act, which covers grounds other than gender-based discrimination, the employer may be ordered to pay an indemnity to the affected employee, the maximum amount of which is not restricted in the Act. The affected employee may also claim compensation for loss of income.

Unfair dismissal

Compensation varies between 0 and 24 months’ salary in case of redundancies and between 3 and 24 months’ salary in case of termination due to reasons relating to the individual employee. The court cannot enforce a reinstatement.

Failure to inform & consult

The sanction for not following the required consultation process in connection with redundancies is a fixed indemnity amounting to maximum of EUR35,590 (which applies for 3 years from September 11, 2019) per each terminated employee regardless of whether the termination is unlawful. The sanction for breaching informing obligations in connection with the transfer of an undertaking is a fine, set as part of a criminal process.

CRIMINAL SANCTIONS

Typically, employers face criminal prosecution in connection with alleged discrimination, or where breach of occupational health and safety obligations has caused damage to an employee, or if the employer has not complied with working-hour regulations. Failure to comply with the Employment Contracts Act or with information obligations in connection with the transfer of an undertaking may also be sanctioned with a criminal fine.
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LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of the European Union (EU), so required to implement relevant EU directives. The official currency is the Euro (EUR). The official language is French.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity may engage employees in France with payroll registrations subject to business and corporate tax planning considerations. Registration as an employer with labor authorities and Pôle Emploi via the Declaration Prior to Hiring (DPAE) to be made within 8 days before the effective starting date.

The employee share of social contributions amounts to approximately 25 to 28 percent of their gross monthly compensation.

The employer share amounts to approximately 45 percent of each employee's gross compensation in companies with fewer than 10 employees, and approximately 50 percent in companies with 10 employees or more.

PRE-HIRE CHECKS

Required

If the individual to be employed is a foreigner, the employer is required to check the validity of their work permit. Except in some specific cases, employers must set up a preventive and informative medical assessment to take place within 3 months of the commencement of employment, unless the employee has been subject to such visit during the previous 5 years.

Permissible

Pre-hire checks may be permissible subject to data privacy laws and if the information is related to the job position. Reference checks are permissible, provided the applicant is informed. A criminal record check is permissible for specific job positions only (eg, those involving the handling of cash).
IMMIGRATION

Nationals of the EU, the European Economic Area (EEA), and Switzerland have the right to work in France provided they have a valid ID.

Citizens of other countries need a valid work permit.

HIRING OPTIONS

Employee

Indefinite-term employment contract (CDI), which is the rule, or fixed-term contract (CDD), which is only permissible in limited circumstances.

The employment contract may be full-time or part-time.

Part-time and fixed-term employees enjoy the same rights as regular employees.

Independent contractor

Independent contractor relationships are permissible. There is a risk of reclassification into an employment contract and a finding of "concealed" work if a relationship of subordination is demonstrated.

Agency worker

Agency workers are strictly regulated by the French Labor Code.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

Written employment agreements are highly recommended.

Certain types of employment contracts must be established in writing (e.g., fixed-term, agency and part-time employment contracts).

Probationary periods

Legal probationary periods for indefinite term employment contracts are 2 months for blue-collar employees and standard employees; 3 months for supervisors and technicians; and 4 months for management-level employees. Collective Bargaining Agreements (CBAs) may provide for differentiating terms.

Such probationary periods are renewable once for 2, 3 and 4 months, respectively, if a CBA and the employment contract expressly provide for it.

Policies

Since January 1, 2020, internal rules (Règlement intérieur) are mandatory in companies or establishments with at
least 50 employees.

Third-party approval

Implementation of the internal rules is subject to consultation of staff representatives (if any); submission to the labor inspector and the clerk’s office of the labor court in the jurisdiction of the company or establishment; and communication to employees by any means.

LANGUAGE REQUIREMENTS

All employment documents must be drafted in French in order to be binding.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All.

Working hours

Legal working time is 35 hours per week. Other working-time schemes available depending upon the terms of the CBA.

Employees may be entitled to RTT or resting days to compensate for days worked above the legal working time, under the conditions set by CBAs.

Overtime

Overtime is compensated with increased rest or by an equivalent rate. Annual threshold of 220 hours, unless otherwise provided by an applicable company agreement or CBAs.

Wages

The minimum wage for 2021 is EUR1,603.12 gross per month for a 35-hour week. In addition, minimum (higher) salaries may be provided by applicable CBAs.

Vacation

Subject to more favorable terms specified in a CBA, 5 weeks (ie, 25 working days, if working Monday through Friday, or 30 working days, if working Monday through Saturday.

Additional RTT or resting days may apply (see above).

Sick leave & pay

Subject to more favorable terms specified in a CBA, daily indemnity is paid by the Social Security Authorities as of the 4th day of absence. The waiting period of 3 days is waived for an employee who has tested positive for the coronavirus disease 2019 (COVID-19) or who is symptomatic while waiting for their test result. The employee
must be unable to telework and must be off work during the isolation period.

For employees with at least 1 year of seniority within the company, social security indemnity is to be supplemented with an employer-paid indemnity, depending on certain conditions and within certain limits, as of the 8th day of absence (the 1st day in case of occupational accident or sickness):

- 90 percent of the employee’s gross compensation for the first 30 days of absence
- 2/3 of such compensation for the next 30 days, with each 30-day period increased by 10 days per full period of 5 additional years’ seniority, up to 90 days for each compensation period

**Maternity/parental leave & pay**

The following provisions apply in the absence of more favorable provisions of the CBA.

- Maternity leave: The minimum duration of maternity leave is 16 weeks.
- Maternity insurance: Daily indemnity paid by the Social Security Authorities under certain conditions.

The employer is not required by law to maintain the employee’s salary in whole or in part but is often required to do so by the applicable CBA or common practice.

- Paternity leave: up to 25 consecutive days (32 days in case of multiple births) to be taken in principle within 6 months of the birthdate and 3 days as a birth leave.
- Parental leave: upon the expiry of the maternity leave. 1 year to be extended up to 3 years. Full-time leave or part-time work permissible during the leave period.

**DISCRIMINATION**

Protected characteristics include origin; sex; customs; sexual orientation; age; family situation; pregnancy; genetic characteristics; affiliation or non-affiliation, whether actual or assumed, to an ethnic group, a nation or a (perceived) race; political opinions; activities linked to a union or a mutual benefit company; religious beliefs; physical appearance; family name; health; disability and loss of independence; ability to speak another language than French; place of residence and location or domicile of bank account; and vulnerability resulting from an obvious or known economic situation.

**BENEFITS & PENSIONS**

State social system provides for social security, welfare and pension coverage. In addition, since January 1, 2016, employers must offer healthcare insurance coverage to all employees. All employers, regardless of the size of the company, including small and medium enterprises (SMEs) and associations, are covered (with some rare exceptions).

CBAs and/or employment contracts may provide for additional mandatory benefits (eg, complimentary welfare coverage for all employees and a supra-complimentary pension plan). CBAs may also provide for minimum benefits.
entitlements (eg, minimum welfare contribution rates and affiliation with insurance bodies).

Retirement upon the employee's initiative: initial entitlement to base retirement set at the age of 62 for employees born January 1st, 1955, or later; for those born between July 1st, 1951 and December 31st, 1954, the legal retirement age is gradually increased.

Retirement upon the employer's initiative: restricted under 70 years old. "Clause couperet," (i.e., clauses under which the employment relationship will automatically terminate at a specific age limit) are prohibited under French labor law.

**DATA PRIVACY**

The General Data Protection Regulation (GDPR) came into force on May 25, 2018. It applies to any processing of personal data within the EU. The GDPR implements new rights for data subjects, such as right to access, data erasure, data portability and consent.

Where data processors/controllers process operations which require regular and systematic monitoring of data subjects on a large scale or of special categories of data, a Data Protection Officer (DPO) must be appointed.

Data transfers outside of the EU are subject to additional requirements. Significant restriction on monitoring internet and e-mail use even when on company's IT device.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

Automatic transfer of the employment contract under the EU Acquired Rights Directive/Article L. 1224-1 of the French Labor Code in case of a modification of the employer’s legal situation (eg, a sale or merger) and provided the criteria set by case law are met, meaning that it is a transfer of a standalone business that maintains its identity within the transferee.

In case of a partial transfer of undertaking, the transfer of protected employees will require the labor inspector's prior approval.

In share or asset deals, it is required for the impacted companies to consult with their Social and Economic Committee (Comité Social et Economique or CSE). Between 15 days and 2 months (3 months in rare situations) of consultation may be required depending on the circumstances.

Under certain circumstances, employees of SMEs must be informed of a proposed sale of the business or of shares to give them the opportunity to make an offer, although there is no obligation on the employer’s part to accept any such offer.

**EMPLOYEE REPRESENTATION**

The Macron reforms have merged the employee delegates, the works council and the Health and Safety Committee into a single employee representative body referred to as Social and Economic Committee (Comité Social et Economique or CSE). A CSE must be put in place in all companies that reach a threshold of 11 employees for 12 consecutive months. The CSE’s rights differ depending on the company's headcount.
Since January 1, 2018, a CSE has been mandatory to implement when the employee threshold (see above) had been met. However, in circumstances where an employee representative body already existed within the company, the company was required to implement a CSE on the expiry of the existing bodies’ mandates, and by December 31, 2019 at the latest.

Union representatives may be appointed in establishments with at least 50 employees. In companies with fewer than 50 employees, a member of the CSE may be appointed as a union representative.

Virtually all companies are subject to industrywide CBAs.

**TERMINATION**

**Grounds**

Termination of an indefinite-term employment contract is permissible on personal grounds (eg, misconduct or poor performance) and economic grounds (eg, economic difficulties, technological changes, activity closure or reorganization to safeguard competitiveness). Economic grounds are assessed at the group level in France in the relevant business sector. French Labor Code provides for a specific definition of "economic difficulties."

Early termination of a fixed-term employment contract is permissible only in limited circumstances as stated by the French Labor Code.

**Employees subject to termination laws**

All employees.

**Restricted or prohibited terminations**

Restrictions on terminations and specific procedures required for termination of protected employees:

- Termination of workers’ representatives (workers’ delegates, members of the works council or the CSE, union delegates and union section representatives)

- Termination while the employment contract is suspended as a result of an occupational disease or accident, save on the grounds of serious misconduct or the inability to maintain the contract for a reason unrelated to the occupational disease or accident

- Termination during pregnancy, maternity/adoption leave and for 10 weeks following maternity leave, save on the grounds of serious misconduct or the inability to maintain the contract for a reason unrelated to the pregnancy, childbirth or adoption.

- Employees holding a specific mandate in towns are protected.

Termination on discriminatory or illicit grounds is prohibited.

**Third-party approval for termination**
The Labor Inspector’s authorization is needed in case of termination of a protected employee.

**Mass layoff rules**

Applicable rules differ depending on the number of employees made redundant over 30 days and the number of employees within the company.

If fewer than 10 employees are made redundant over 30 days in a company with at least 50 employees, informing or consulting the CSE is required.

If at least 10 employees are made redundant over 30 days in a company with at least 50 employees, the employer must implement an employment safeguard plan (PSE), inform/consult with the CSE and follow the procedure under the control of the Labor Administration.

In companies with fewer than 50 employees, informing or consulting with the CSE, when in place, is required.

**Notice**

Under 6 months’ seniority: as determined by law, the CBA or geographical and professional common practice.

Between 6 months’ and 2 years’ seniority: 1 month.

At least 2 years’ seniority: 2 months.

Subject to differentiating provisions in the CBA, employment contract or common practice, whichever is more agreeable to the employee.

No notice period in case of dismissal for gross or willful misconduct.

**Statutory right to pay in lieu of notice or garden leave**

Employees may be paid in lieu of notice. Alternatively, an employee can be paid their usual salary for the duration of the notice period even if not performed.

**Severance**

An employee with at least 8 months of seniority is entitled to a severance of 1/4 of their average monthly salary per year of seniority for the first 10 years and 1/3 of their average monthly salary per year of seniority for each following year, subject to more agreeable provisions in the applicable CBA, which are frequent.

**POST-TERMINATION RESTRAINTS**

Restrictive covenants are allowed if justified by the company’s business and employee’s role.

**Non-competes**

Allowed under 5 conditions. It must:

- Be essential to the protection of the company’s legitimate interests
• Be limited in time

• Be limited in space

• Take into account the specificities of the employee’s duties

• Provide for a financial compensation – commonly at least 33 percent of the employee's compensation for the duration of the non-compete, but depends on the applicable CBA. CBAs may provide for specific terms.

Customer non-solicits

No legal requirement for a financial compensation, although their validity is currently challenged by the courts, which often consider that they in fact constitute a non-compete restriction and as such should be duly compensated.

Employee non-solicits

Allowed.

WAIVERS

An employee may waive their rights in a settlement agreement concluded with their employer after termination of their employment contract. Criminal claims are not covered. A settlement indemnity is always paid on top of mandatory severance. A settlement agreement cannot effect a termination (as opposed to, for example, a resignation, dismissal or retirement leave) and is simply a way to obtain a waiver of claims or disputes.

A mutual termination (rupture conventionnelle) does not result in a settlement agreement or waiver.

REMEDIES

Discrimination

Any measure taken on discriminatory grounds would be held null and void and entail criminal sanctions (up to 3 years' imprisonment, a fine of up to EUR45,000 for the company’s legal representative and EUR225,000 for the company as a legal entity), in addition to potential damages for the harm sustained.

Unfair dismissal

Dismissal without "real and serious" cause: The court may order the employee’s reinstatement in their former position; if either party disagrees, the employee will be awarded damages pursuant to the Macron scale provided in article L. 1235-3 of the Labor Code.

The Macron orders set a mandatory scale of minimum and maximum damages to be granted in case of unfair dismissal, from which courts cannot depart. The minimum and maximum amounts depend on the company’s headcount and on the length of service of the employee. The Macron orders also make it possible for the court to
consider the dismissal indemnity paid to the employee (as the case may be) to determine the amount of damages to be granted, should the dismissal be considered unfair.

Note that this framework does not apply where the dismissal is null and void. In such cases, the employee may either be reinstated or obtain an indemnity which cannot be less than 6 months’ salary.

Additional claims are often raised by dismissed employees along with unfair dismissal, which will be taken into consideration for compensation purposes.

**Failure to inform & consult**

Offense of obstruction, which entails criminal liability (a fine of up to EUR7,500 for the company’s legal representative and EUR37,500 for the company as a legal entity).

**Criminal Sanctions**

Yes (eg, for discrimination, harassment, offense of obstruction, or where an employee is discovered undertaking “concealed” work).

Both the company's representative and the company as a legal entity can be held criminally liable.
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LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of the European Union (EU) and required to implement relevant EU Directives. The official currency is the Euro (EUR). The official language is German.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign company can engage employees in Germany without local corporate presence, subject to doing business and corporate tax considerations. For employment and payroll purposes, registrations with tax and social security authorities are required.

Employee earnings are subject to withholdings for social security (up to a ceiling of EUR7,050 gross per month for the states of the former West Germany and a ceiling of EUR6,750 for the states of the former East Germany; about 40 percent borne equally by employer and employee) and wage tax (from 14 percent to 45 percent) to be completed through payroll.

PRE-HIRE CHECKS

Required

Immigration compliance. For certain employment positions (eg, public services, education sector, medical sector and security services), statement of good standing (Führungszeugnis) from the Federal Central Register (Bundeszentralregister).

Permissible

Requiring a credit reference check or a statement of good standing is only permissible for roles justifying interest in such information and is subject to proportionality requirements.

IMMIGRATION

Free movement of employees for all countries of the European Economic Area (EAA) – the EU, Iceland,
Liechtenstein, Norway – and Switzerland. All other nationals require a residence and work permit. Nationals of, inter alia, the US, Israel and Japan and skilled workers enjoy favorable immigration treatment and have access to fast-track procedures.

**HIRING OPTIONS**

**Employee**

Indefinite, fixed-term, full-time or part-time. In principle, a part-time or fixed-term employee may not be treated less favorably than a comparable full-time or permanent employee because of their status. Different treatment is only justified for objective reasons.

**Independent contractor**

Independent contractors may be engaged directly by the company or via a personal services company. Engagement may be subject to misclassification exposure with high financial risk. Work instructions and organizational integration, in particular, may jeopardize an independent contractor position. Incorrect classification may have severe consequences for the customer with regard to tax and social security (e.g., it may yield an obligation to pay the employer’s and employee’s share of social security contributions for at least up to the last 4 years; and if intentional, up to 30 years). The individual could also claim an employment relationship. Among the possible consequences, the company may be excluded from public tenders and incur administrative fines – and, in if intentional, may be charged with criminal offenses.

**Agency worker**

Agency workers shall not work for unlimited periods of time at the same business. The agency is required to hold a special permit granted by the Federal Employment Agency. Agency workers have the right to treatment that is equal to that of employees in relation to pay and other essential working conditions, unless a specific collective agreement provides otherwise. There is a statutory maximum lease period of 18 consecutive months for an individual agency worker with the same client; amendment by collective agreements is possible. Previous assignments to the same company shall be taken into account if they took place after April 1, 2017 and the gap between 2 assignments was shorter than 3 months. On the expiration of such period, the employees must either become permanently employed with the employer or must be withdrawn by the temporary employment agency. Additionally, the contractual agreement must be openly declared as agency work, and the exact agency worker must be determined before the start of agency work. Breaches of employee leasing laws can additionally trigger severe consequences for the lessee. In particular, the employee could claim an employment relationship with the lessee by operation of law. Moreover, breaches may trigger administrative fines, and the lessee may be held liable for social security contributions. In addition, the companies may be excluded from public tenders.

**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

Written employment agreements are common but not mandatory, except in the case of fixed-term contracts. A written statement of the core working conditions must be provided by the employer within 1 month of commencement of employment.
Probationary periods

Permissible, subject to proportionality, for a term of up to 6 months. Statutory dismissal protection will start after 6 months only.

Policies

No mandatory policy requirements. If a works council exists, works agreements will largely replace policies. Without a works council, policies are common, but they are subject to standard contract term provisions, which means they cannot be changed unilaterally to the detriment of the workforce.

Third-party approval

No requirement to lodge employment contract or policies with or receive approval from any third party.

However, if established, the works council has the right to object to the employment in certain cases.

LANGUAGE REQUIREMENTS

No statutory requirements. Employees are often open to English agreements or policies. In case of litigation, the courts will request official translations.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All.

Working hours

On average, 48 work hours per week in any 6-month period; working time on a workday may not exceed 10 hours. Uninterrupted minimum break of 11 hours after every workday. Work on Sundays and official holidays requires special permission.

Overtime

No overtime rate set forth by statute – instead, subject to contractual agreement, which is largely regulated by standard contract term provisions. The agreement must be fair; any provision incorporating overtime into overall wages must be related to a defined amount of overtime.

Wages

As of January 1, 2022, the legal minimum wage will be EUR9.82 gross per working hour. On July 1, 2022, it will be raised to EUR10.45 gross. In addition, the coalition agreement of the newly formed government plans to raise the minimum wage to EUR12.

Generally, these rules also apply to trainees, except those undergoing compulsory practical training. A few more exceptions are made for arrangements regarding apprentices, volunteers and former long-term unemployed
workers. Furthermore, there are also industry-specific minimum wages (eg, in the construction sector).

**Vacation**

Four weeks per year plus local public holidays (between 9 and 12 days, depending on the state). Additional vacation entitlements beyond the legal minimum vacation entitlement may be agreed in the employment contract or collective agreement.

**Sick leave & pay**

Statutory sick leave and pay provisions allow for up to 6 weeks of employer-paid sick leave, followed by 72 weeks of sick allowance paid through the public health fund. Sick allowance is based on the earned income within the previous 12 months and amounts to 70 percent of such. It is calculated per calendar day and is limited to the statutory maximum of EUR112.88 per day (year 2022).

**Maternity/parental leave & pay**

In Germany, a distinction must be made between maternity protection and parental leave. Maternity protection serves to protect the mother from health risks in connection with childbirth. Parental leave, on the other hand, is available to both parents. The maternity protection period is 6 weeks before birth and 8 weeks after the birth. During these periods, employment is prohibited. The mother can only waive the periods of protection before childbirth. Parental leave paid by the state for 12 months – 14 months if the other parent takes at least 2 months – with a 65-percent net payment rate (ie, Basic Parental Allowance). Further 24 months of unpaid parental leave are possible with full protection within the workplace and the right to return to work. Parental Allowance Plus is available for twice as long as Basic Parental Allowance. The employee can choose either 1 month in which the employee receives Basic Parental Allowance or 2 months in which the employee receives Parental Allowance Plus. If the employee does not work after their child’s birth, Parental Allowance Plus is half the amount of Basic Parental Allowance.

**DISCRIMINATION**

Statutory protection exists against unlawful discrimination and harassment based on race or ethnic origin, gender, religion or belief, disability, age or sexual orientation.

**BENEFITS & PENSIONS**

No benefits required beyond those covered under social insurance contributions. Employers are required to provide all employees with an option to enroll in a deferred salary pension insurance plan with the administration costs borne by the employer.

**DATA PRIVACY**

Covered by the EU-wide General Data Protection Regulation (Datenschutzgrundverordnung, or GDPR) entered into force in May 2018 and the complementing Federal Data Protection Act. Processing of personal data is generally
unlawful except as listed by the Act and the General Data Protection Regulation, a works council agreement or free and individual consent. Appointment of data protection officers is required if more than 9 individuals deal with electronically saved personal data. Special rules apply to data transfer outside the EEA. Significant restrictions on monitoring email and internet use exist.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

Automatic transfer of employment under the EU Acquired Rights Directive/Germany’s transfer of business (Section 613a of the Civil Code) rules in case of an asset deal or service provision change. Employees shall receive detailed written information prior to the transfer and may object to the transfer within 1 month after receipt thereof.

There is a duty to inform and consult with the works council. Significant restrictions on changing terms and conditions following a transfer exist. Any dismissal connected to the transfer would be unfair; dismissals for other reasons are possible.

**EMPLOYEE REPRESENTATION**

Works council: The elected works council plays a major role in the everyday lives of larger German businesses. By law, employees in every business of at least 5 employees may form a works council at their own initiative. The works council has information, consultation and co-determination rights in the area of hiring, positioning and dismissals, internal organization of the business, restructuring and personal planning, among others. Employer and works council shall form works agreements to regulate the affairs of the business, except working time and remuneration, which are reserved for collective agreements with a trade union. Works councils may not call industrial action.

Co-determination on supervisory board level: Companies with a regular workforce over 500 employees in Germany establish a supervisory board with 1/3 elected employee representation and a fairly limited scope of duties. If the regular workforce in Germany exceeds 2,000, 1/2 of the members of the supervisory board are elected employee representatives with a fixed list of duties. The chairman of the supervisory board is, by law, always nominated from the shareholder's side and has a casting vote, ensuring control by the business owners.

Trade unions: 18 percent of the German workforce are members of a trade union. Trade unions are prevalent in certain sectors (eg, manufacturing, building, transport and the public sector). Trade unions deal with employer associations or individual employers. Once represented businesses agree on a collective agreement, they are widely used by other businesses as reference. Formation of collective labor organizations is a constitutional freedom, as is the right to avoid them.

**TERMINATION**

**Grounds**

In a business with up to 10 employees, there is no dismissal protection, and termination can generally occur for any reason. For businesses with more than 10 employees, dismissal protection exists unless dismissal is justified by compelling operational reasons, conduct-related reasons for particular types of misconduct or personal reasons (eg, the inability to work due to health or new job requirements).
Employees subject to termination laws

Employees with less than 6 months’ seniority do not have general dismissal protection. This does not apply to special dismissal protection in connection with parental leave, maternity leave, works council membership or discrimination.

Restricted or prohibited terminations

These include pregnant employees, mothers during maternity leave, employees on parental leave, works council members, candidates during elections, data protection officers and severely disabled employees.

Third-party approval for termination/termination documents

The works council, if established, must be consulted regarding each termination. Dismissal of disabled employees, pregnant employees or employees on maternity or parental leave may be permitted by specific authorities.

Collective redundancies require consultation with the works council about a restructuring agreement and a social plan, whereby consent is only mandatory for the social plan; in case of a tie, the employer’s decision on the restructuring plan prevails.

Mass layoff rules

Yes, strict information and consultation rules apply where 6 or more employees in a business between 20 and 59 employees are to be made redundant within 30 days; in larger businesses, the threshold is 10 percent or more than 25 individuals; in businesses with 500 or more employees, the threshold is at least 30 employees. The employer must file an application with the Federal Employment Agency; failure to comply will render all notices and agreed terminations invalid.

Notice

4 weeks’ statutory notice effective to the 15th or the end of a calendar month; after 2 years of employment, 1 month effective to the end of a calendar month; with a sliding scale of up to 7 months’ notice after 20 years of service. Not required for terminations for very serious misconduct.

Statutory right to pay in lieu of notice or garden leave

No statutory right to pay in lieu of notice. The right to garden leave depends on contract terms and merits of the case, applying a weighting of interests between both parties.

Severance

No statutory severance. A valid dismissal will end the employment without compensation, unless it is part of a collective restructuring covered by a social plan agreed with the works council. Invalid dismissal will lead to enforced reinstatement by the labor courts, unless the parties settle the dispute. Settlements are standard; the general formula is between 1/2 and 1.5 times an employee’s monthly salary per year of service. There is no maximum threshold on settlements.
POST-TERMINATION RESTRAINTS

Must be in writing. Those that protect the employer’s legitimate business interests may be enforced if reasonable. Garden leave is common for senior employees.

Non-competes

Typically no longer than 6 to 12 months, with a statutory maximum of 2 years. Compensation of 50 percent of the employee’s wages is required during the non-compete period.

Customer non-solicits

Permissible in narrow circumstances.

Employee non-solicits

Permissible only if related to illegal poaching; an agreement not to hire employees from a certain business is not enforceable.

WAIVERS

Enforceable; subject to legal review if, for instance, employees were not given time to consider.

REMEDIES

Discrimination

Injunction to continue or repeat discriminating actions. Compensation is capped at 3 times an employee’s monthly salary if discrimination is related to the recruitment process. Uncapped compensation in all other cases, based on the claimant’s financial loss and injury to feelings. German courts tend to award limited compensation; awards of EUR30,000 have been observed, but they are an extreme exception.

Unfair dismissal

Reinstatement. Therefore, most cases are settled.

Failure to inform & consult

The works council may bring legal action, which can result in administrative fines of up to EUR10,000 if the employer fails to inform and consult with the works council regarding certain matters.

CRIMINAL SANCTIONS

Significant frequent violation of works council information and consultation rights may lead to criminal charges; however, this rarely occurs.
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HONG KONG, SAR

LEGAL SYSTEM, CURRENCY, LANGUAGE

Common law. The Basic Law of the Hong Kong Special Administrative Region (HKSAR) provides that courts of HKSAR may refer to the precedents of other common law jurisdictions when making decisions. The official currency is the Hong Kong dollar (HKD). The official languages are English and Chinese.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity may engage employees in Hong Kong subject to business, corporate and tax considerations and proper payroll registration.

Payment of Hong Kong tax is the employee’s responsibility. Therefore, Hong Kong employers are not required to withhold tax through the payroll system, subject to exceptional circumstance where an employer is required to withhold final payments of an employee who will leave Hong Kong for 1 month or more after termination.

PRE-HIRE CHECKS

Required

Immigration compliance.

Permissible

Any data collected as a result of pre-hire checks must be necessary and not excessive. In order to comply with the Personal Data (Privacy) Ordinance (PDPO), candidates must be expressly informed of the collection, use and disclosure of any personal data related to them by their employer or prospective employer. Asking a candidate to sign a Personal Information Collection Statement will assist an employer in complying with these obligations. A candidate may be asked to undergo a medical examination, but only after the employer has made them a conditional offer of employment. If criminal checks are carried out, an employer must be careful not to dismiss, exclude or display prejudice against the candidate on the basis of any spent conviction – that is, where a person
was previously convicted of an offense for which they were not sentenced to imprisonment for more than 3 months or given a fine of more than HKD10,000, and the person has not been convicted of any other offense for at least 3 years.

**IMMIGRATION**

Any person who does not have the right of abode in Hong Kong and who undertakes work of any kind, whether paid or unpaid, must hold a valid employment visa, unless they hold a valid dependent visa. Processing time is generally 6 to 8 weeks.

**HIRING OPTIONS**

**Employee**

Indefinite, fixed-term, full-time, part-time or casual.

**Independent contractor**

Independent contractors may be engaged directly by the company or via a personal services company.

**Agency worker**

Typically, agreements between the agency and the end user stipulate that the end user is not the employer, while an agreement between the worker and the agency stipulates that the worker is either self-employed or an employee of the agency. The placement may be for a fixed term or may be open-ended. The Employment Ordinance (EO) and Employment Agency Regulations regulate employment agencies.

**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

A prospective employee must be provided certain information (i.e., wages and wage period, any end-of-year payment and length of notice) prior to commencing employment. An employment contract in writing is not required, but it is common practice to have a written contract signed by both parties.

**Probationary periods**

Permissible. No statutory limit, but 3 to 6 months is common. Regardless of what the employment contract states, either party can terminate the employment contract without notice or payment in lieu during the first month of the probationary period.

**Policies**

No mandatory policies, although it is common for employers to implement company policies for its employees, such as an anti-discrimination policy.

**Third-party approval**
No requirement to lodge employment contracts or policies with or obtain approval from any third-party.

**LANGUAGE REQUIREMENTS**

No statutory requirements.

**MINIMUM EMPLOYMENT RIGHTS**

Employees entitled to minimum employment rights

The EO applies to every employee engaged under a contract of employment, to any employer of such employee and to any contract of employment between such parties. Employees to whom the EO applies are entitled to basic protections including payment of wages, restrictions on wage deductions, the granting of statutory holidays (albeit not necessarily paid) and employment protection in respect to unlawful dismissal. Employees who are employed under a continuous contract (i.e., for 18 hours a week for 4 consecutive weeks or where the parties agree that the employee will be continuously employed, known as continuous employment) are entitled to further benefits such as rest days, paid annual leave, sickness allowance, paid statutory holidays, maternity leave, paternity leave, severance payments and long-service payments.

**Working hours**

Currently no restrictions, except for young employees who are between the ages of 15 and 18 and are employed in an industrial undertaking.

The Labour Department has been engaging its 11 industry-based tripartite committees – comprising representatives of the Labour Department, employers and employees – to formulate non-binding, sector-specific working-hour guidelines for 11 industries.

**Overtime**

No obligation to provide pay for overtime worked.

**Wages**

Statutory minimum wage is currently set at HKD37.50 per hour.

**Vacation**

Between 7 and 14 days, depending on length of service. In addition, there are 13 statutory holidays. Banks, educational institutions, governmental departments and many private employers also elect to observe general holidays in addition to the minimum 13 statutory holidays. General holidays are declared to be every Sunday as well as on 17 additional days, a number that includes the 13 statutory holidays.

**Sick leave & pay**

Employees in continuous employment accrue paid sickness allowance at a rate of 2 paid sickness days for each completed month of service in the first year of employment and 4 paid sickness days for each completed month of...
service thereafter, up to a maximum accrual of 120 sickness days. Sickness allowance is paid by the employer, and payment is only due for sickness days taken by an employee if the employee has taken 4 or more consecutive sickness days off. Once the employee is off for at least 4 sickness days, each sickness day is deemed subject to be paid the sickness allowance, including the first 3 days, up to the maximum accrual; however, this 4-consecutive-day requirement does not apply to any day off taken by a female employee for her pregnancy checkups, post-confinement medical treatment or miscarriage. Sick leave must also be supported by a valid medical certificate. Sickness allowance is paid at a daily rate equivalent to 4/5 of the daily average of wages earned by the employee during the period of 12 months immediately before the sickness day or the first sickness day, as appropriate – or, if the employee has been employed by the employer for a period shorter than 12 months immediately before the sickness day, the shorter period.

**Maternity/parental leave & pay**

14 weeks’ maternity leave. This is paid at 4/5 of the employee’s average daily wages, subject to a cap of HKD80,000 for the last 4 weeks of the 14-week maternity leave, if the employee has been in continuous employment for no less than 40 weeks at the commencement of maternity leave. For employees without 40 weeks’ continuous employment, maternity leave is unpaid. Employers, after payment of all maternity leave pay on the normal payday, may apply to the government for reimbursement of the last 4 weeks’ maternity leave pay payable and paid under the Employment Ordinance. Where an employee gives birth later than expected, the employee may extend the period of maternity leave by the number of days between the expected date of birth and the actual date of birth. This period is unpaid.

Finally, an employee may take a further period of up to 4 weeks for illness or disability arising out of the pregnancy or childbirth. This period is unpaid and is in addition to sickness allowance. The EO grants 5 days’ paternity leave to male employees who are employed under a continuous contract in Hong Kong in respect of the birth of each child of which he is the father. Provided the employee has been in continuous employment for no less than 40 weeks at the commencement of the paternity leave, the paternity leave is paid at 4/5 of the employee’s average daily wages. For employees without 40 weeks’ continuous employment, the paternity leave is unpaid.

**DISCRIMINATION**

Characteristics protected from unlawful discrimination, victimization and harassment include sex, pregnancy, breastfeeding, marital status, family status (ie, responsibility for the care of an immediate family member), disability, race and union affiliation.

**BENEFITS & PENSIONS**

Subject to certain exemptions (eg, for an individual from overseas who enters Hong Kong for employment and who holds an employment visa with a validity period of less than 13 months or is covered by an overseas retirement scheme), once an employee has been employed for 60 days, the employer is required to enroll the employee into a Mandatory Provident Fund (MPF) scheme. Generally, both the employer and the employee are required to contribute a minimum of 5 percent of the employee’s "relevant income," up to a capped maximum
amount of HKD1,500, which may be adjusted occasionally. Relevant income includes wages, salaries, leave pay, fee, commission, bonus, gratuity, housing allowance, housing benefits, any perquisite or allowance. It does not include any non-monetary benefits, severance payments or long-service payments.

**DATA PRIVACY**

The PDPO is principally concerned with 6 data protection principles (DPPs). Broadly, these require:

- That personal data is only collected for a lawful purpose, that only personal data that is necessary and not excessive for that purpose is collected and that individuals are informed of certain things before data is collected or used (DPP 1)

- That all reasonably practicable steps are taken to ensure that personal data is accurate and that it is only retained for as long as is necessary to fulfill its purpose (DPP 2)

- That personal data is not, without the prescribed consent of the job applicant or employee, used for a purpose other than the purpose for which it was collected (DPP 3)

- That all reasonably practicable steps are taken to ensure that the personal data is secure and protected against unauthorized or accidental access, processing, erasure or other use (DPP 4)

- That all reasonably practicable steps are taken to ensure that an individual may access information about the data user’s policies and practices in relation to personal data, the kind of personal data about them that is being held and the purposes for which it will be used (DPP 5) and

- That, with some exceptions, an individual is entitled to request access to all personal data held by a data user and to correct that data if it is inaccurate (DPP 6).

There are provisions in the PDPO that restrict the transfer of personal data outside of Hong Kong, but these are not currently in force.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

No automatic transfer of employment. This includes an associated company transfer or change of business ownership, or a merger situation where the employment entity is changed. Therefore, the previous employer must terminate the employee’s employment contract, and the new employer must offer – and the employee must accept – employment. If the employee accepts employment with the new employer or unreasonably refuses employment with the new employer in circumstances where the offer of new employment is on the same terms or terms and conditions no less favorable than those with the previous employer, then the previous employer may be able to avoid liability for a severance payment, subject to satisfaction of other conditions. There is no duty to consult, either individually or collectively, with employees or employee representatives.

**EMPLOYEE REPRESENTATION**

Although Hong Kong residents have the right and freedom to form and join trade unions, the level of employee
participation in trade unions is relatively low, and Hong Kong enjoys a relatively harmonious climate of industrial relations. Collective bargaining agreements are uncommon.

There are no employee representatives or works councils.

**TERMINATION**

**Grounds**

Termination with notice or payment in lieu of notice is permissible.

Termination without notice or payment in lieu of notice is permissible if an employee, in relation to their employment:

- Willfully disobeys a lawful and reasonable order
- Engages in misconduct, such conduct being inconsistent with the due and faithful discharge of their duties
- Is guilty of fraud or dishonesty or
- Is habitually neglectful of their duties.

Employees with continuous employment of 2 years or more are also protected against "unreasonable dismissal" (ie, there must be a valid reason for termination and, in this regard, any of the following may constitute a valid reason: the conduct of the employee; the capability or qualifications of the employee for performing work of a kind which they were employed to do; redundancy; illegality; or another substantial reason). Unreasonable dismissal is not a criminal offense, but employees are entitled to certain statutory remedies. Presumption of unreasonable dismissal may be rebutted by demonstrating that there is a valid reason for termination. There is then no requirement to show that the termination was "reasonable" or "fair" in these circumstances.

Employers should also ensure they comply with the contractual terms and other implied terms that relate to the reason for, and manner of, dismissal.

**Employees subject to termination laws**

Employees with continuous employment of 2 years or more are protected against unreasonable dismissal (see above). There are prohibited or restricted terminations for all employees (see below).

**Restricted or prohibited terminations**

Female employees who are pregnant or on statutory maternity leave, subject to certain exceptions; any employee who is absent from work on sick leave and is in receipt of statutory sickness allowance; any employee who has suffered a work-related injury entitling them to compensation under the Employees' Compensation Ordinance; by reason of an employee's trade union membership and activities; by reason of an employee giving evidence or information in any proceedings or inquiry in connection with the enforcement of the Employment Ordinance, work accidents or breach of work-safety legislation; any employee who has given evidence under the Factories and
Industrial Undertaking Ordinance (breach of any of the above may constitute "unlawful dismissal"); any employee who is undertaking jury service; any employee who is taking statutory vacation; and by reason of an employee's spent conviction.

Unlawful dismissal is an offense with a fine up to HKD100,000 upon conviction.

**Third-party approval for termination/termination documents**

Not applicable for this jurisdiction.

**Mass layoff rules**

Not applicable for this jurisdiction.

**Notice**

Minimum 7 days' notice after the first month of the probationary period and during subsequent employment. If the notice is specified in the employment agreement, the notice will be the agreed period. If no notice period is specified, it is presumed to be 1 month. Notice is not required for termination for serious misconduct (ie, gross misconduct or cause), but it requires a high threshold.

**Statutory right to pay in lieu of notice or garden leave**

There is a statutory right to make a payment in lieu of notice. Right to place on garden leave depends on the terms of the contract.

**Severance**

Statutory severance payment payable to redundant employees with continuous service for 2 years or more. Calculated using a base amount per year of service or 2/3 of the employee's last full month's wages (being the monthly average of the wages earned by the employee during the previous 12 months – or a shorter period where the employee has been employed for less than 12 months – or 2/3 of HKD22,500, whichever is less). Total severance payment is capped at HKD390,000. Employers are entitled to offset from liability to pay a severance payment, any gratuity or retirement scheme payment that has been made to the employee in respect to any years of service for which the severance payment is payable. For the purposes of a severance payment, there is a statutory presumption that the termination arose by reason of redundancy. This presumption may only be rebutted by an employer who proves that the employment was terminated for reasons wholly unrelated to redundancy.

**POST-TERMINATION RESTRAINTS**

Those restraints that protect the employer's legitimate business interests may be enforced if reasonable. Garden leave is common for senior employees.

**Non-competes**

Typically no longer than 3 to 6 months.
Customer non-solicits
Permissible in limited circumstances. Typically no longer than 6 to 12 months.

Employee non-solicits
Permissible in limited circumstances. Typically no longer than 6 to 12 months.

WAIVERS

Enforceable to waive contractual rights. While an employee may be asked to waive statutory rights, there is some uncertainty as to whether such a waiver would be effective in preventing an employee from subsequently bringing a claim to exercise their statutory rights.

REMEDIES

Discrimination

Uncapped compensation, which may include the claimant’s financial loss; injury-to-feelings compensation of between EUR1,000 (around HKD9,500) and EUR54,000 (around HKD475,000), based on the latest Vento guidelines in the UK as of the date of this publication, which set out the guidelines used by tribunals to decide how much they should award for injuries to feelings; and, in some instances, exemplary damages.

Unlawful and/or unreasonable dismissal

There is no unfair dismissal regime in Hong Kong. The EO provides a statutory right to remedies which differ depending on the circumstances in which the unlawful dismissal and/or unreasonable dismissal took place.

For unreasonable dismissal, or unreasonable and unlawful dismissal, an employee may claim reinstatement, re-engagement or terminal payments.

In particular, the Labour Tribunal may order compulsory reinstatement or re-engagement of an employment, without securing consent of the employer, if the employee was unreasonably and unlawfully dismissed and it considers that the making of such an order is appropriate and reasonably practicable. If the employer does not reinstate or re-engage the employee as required by the order, the employer shall pay to the employee a further sum, amounting to 3 times the employee’s average monthly wages and subject to a ceiling of HKD72,500. The employer commits an offense if they willfully and without reasonable excuse fail to pay the further sum. For unreasonable and unlawful dismissal, where no order for reinstatement or re-engagement has been made, the court or Labour Tribunal may also make an award of compensation, up to HKD150,000, to the employee if the Labour Tribunal considers it just and appropriate.

Failure to inform & consult

There are no information or consultation requirements.

CRIMINAL SANCTIONS
The provisions of the EO are enforced, first by criminal law sanctions (where the usual penalty is a fine, except for payment-of-wages offenses, which can give rise to a sentence of imprisonment), and secondly, by way of civil remedies at the instance of the aggrieved employee. Further, in some instances, liability can be passed to the individual decision-maker of the employing company.

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HUNGARY

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of the European Union (EU), so required to implement relevant EU directives. The official currency is the Hungarian Forint (HUF). The official language is Hungarian.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

In order to employ individuals in Hungary, the employing entity must have an established branch within the country. The employment of individuals must be notified to the tax authority and is subject to tax payment obligations. Employers must pay a social security tax and vocational training contribution of 13 percent (subject to review) and a 18.5 percent contribution is payable by the employee, but deducted by the employer.

PRE-HIRE CHECKS

Required

Immigration compliance is required. Criminal records are also checked in relation to certain occupations, such as judges, attorneys, public servants and auditors.

Permissible

Apart from the above, a check of criminal records is only allowed if it provides important information with respect to the given position or work to be carried out.

Further checks (eg, education and references) are also permitted, but they may only be carried out if the aim is to obtain important information for the purposes of entering into the employment.

IMMIGRATION

Nationals of the EEA and Switzerland have the right to work in Hungary without a visa or a work permit.

Third-country citizens must have a residence permit for the purpose of work before starting work in Hungary.
**Hiring Options**

**Employee**

Employment may be established for either an indefinite or fixed term as full-time or part-time employment.

**Independent contractor**

Independent contractors may be engaged through a company using service contracts on a civil-law basis. There are several criteria that help to decide whether a specific service may be provided by an independent contractor or whether an employment relationship must be established.

**Agency worker**

Employers may enter into crew leasing agreements with temporary workers’ agencies in order to employ temporary agency workers. The engagement of a temporary agency worker by the same receiving employer is limited to a maximum of 5 years.

Equal conditions of work and employment must be given to employees employed directly by the receiving employer and to temporary agency workers. Equal treatment in respect of remuneration and benefits is required from the 184th day of employment of a temporary agency worker.

**Employment Contracts & Policies**

**Employment contracts**

Employment contracts must be entered into in writing, and the employee’s base salary and position are mandatory elements. It is also recommended that contracts specify the place of work. The employer and the employee may agree on further terms in the employment contract.

**Probationary periods**

Permissible and commonly used. The statutory limit is 3 months, which may be extended up to 6 months by collective agreement.

**Policies**

An employee must be informed in writing within 15 days from the start of employment of, among other information, daily working hours, other components of remuneration, the date of payment of salary, the duration of paid holiday and detailed duties of the employee (ie, the job description).

An employer is permitted to set rules in relation to other subjects in its own internal policies if these are properly communicated to staff.

**Third-party approval**

Approval from a third party is usually not required to enter into an employment contract. In special cases (eg, for
non-EU citizens), specific permits may be required.

**LANGUAGE REQUIREMENTS**

The employment contract is only valid if the contracting parties understand the language in which it is written.

**MINIMUM EMPLOYMENT RIGHTS**

**Employees entitled to minimum employment rights**

All employees are entitled to minimum employment rights.

**Working hours**

Normal working time for full-time employees is 8 hours per day. The parties may stipulate shorter or, in specific cases (e.g., standby duty or those working in a family business), longer working hours for full-time employment. Rules apply in relation to rest breaks and rest periods between working days.

**Overtime**

Overtime worked must not breach the daily and weekly maximum working time, which, including overtime, in a single working day must not exceed 12 hours and must not exceed 48 hours per working week.

The annual maximum overtime limit is generally 250 hours, or is up to 300 hours if provided by a collective agreement. However, by written agreement of the employer and the employees, the employer may require 150 hours (or 100 hours, if the annual maximum overtime limit is already raised to 300 hours by collective agreement) of additional overtime annually from employees subject to the agreement.

An employee is entitled to a wage supplement for overtime, which is 50 percent of the employee’s base salary in case of overtime beyond the regular daily working time. A wage supplement must also be paid in return for any “extraordinary” work completed on weekly rest days or public holidays (i.e., 50 percent plus a day off or 100 percent).

**Wages**

The mandatory minimum wage is HUF 200,000 from January 1, 2022. A higher minimum wage – the so-called guaranteed wage minimum – of HUF 260,000 for 2022 applies to jobs requiring higher education (e.g., a secondary school or vocational training).

**Vacation**

The amount of paid basic holiday is 20 days per year, which is increased according to the age of the employee, up to 30 days for employees over 45 years of age.

Also, special holiday entitlements apply (e.g., for employees with children).
Sick leave and pay

Employees are entitled to 15 days of sick leave per year, during which they receive 70 percent of their salary by way of an absence fee, which is entirely borne by the employer. After the first 15 days of sick leave in a calendar year, social security takes over payment of sick pay; however, 1/3 of the cost is borne by the employer.

Maternity/parental leave and pay

Maternity leave entitlement is 24 weeks during the pregnancy period and after giving birth. Leave should be scheduled by the employer so that a maximum of 4 weeks’ leave is taken before the planned date of childbirth. If eligible, from 1 July 2021, employees receive 100 percent of their average salary for this period, which is covered by the social security system.

A father is entitled to 5 days off within the 2-month period following the date of his child's birth.

Employees are entitled to parental leave without pay until the child reaches the age of 3 in order to care for the child at home, but this is longer for disabled or sick children. During this period, the employee receives child care pay from the social security system amounting to 70 percent of the employee's average salary until the child reaches 2 years of age, and the minimum amount of old-age pension after the child’s 2nd birthday until they reach 3 years of age.

DISCRIMINATION

Direct and indirect discrimination, victimization, unlawful segregation and harassment are prohibited.

Employers are forbidden from discriminating against employees on grounds of sex, race, color, nationality, national or ethnic origin, mother tongue, disability, health status, religion or belief, political or other opinion, marital status, sexual orientation, age or any other circumstances which are not connected to work.

The principle of equal treatment is not violated if the differences applied are based on a difference in the nature, the quality or the quantity of the work, a difference in working conditions, required training, experience or responsibility or based on differences in the labor market conditions.

BENEFITS & PENSIONS

The benefits offered to an employee will usually depend on their seniority within the company. At manager or director level, employees are likely to be offered, for example, a company car and/or mobile telephone.

It is usual to provide employees with a range of optional fringe benefits (eg, contribution to a pension or healthcare fund, contribution to travel expenses, food vouchers or vouchers for holiday) on the basis of the respective Fringe Benefit Policy. Commonly, up to a predefined maximum amount, employees may select from the options offered in line with their own preferences.
The Hungarian pension system consists of 2 pillars:

- The state pillar, or the social security pension scheme, and
- The private pillars that may be a privately managed pension scheme with voluntary contributions, or a pension advance-saving account kept by a bank or an employer's pension scheme, which are nonexistent in practice.

**DATA PRIVACY**

Employers must balance their need to obtain, use, store and disclose information for effective management and business purposes with their employees' right to privacy. The law distinguishes between "personal data" and "sensitive personal data." Special rules apply for the transfer of personal data within and outside of the EEA. The National Authority for Data Protection and Freedom of Information is responsible for ensuring compliance and enforcing data protection.

Since May 2018, Hungary has been subject to the General Data Protection Regulation (GDPR), which introduced significant new obligations and onerous sanctions for employers.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

Where there is the transfer of a business, there will be an automatic transfer of employment relationships existing at the time of the transfer. The entire employment relationship, with all rights and obligations, will transfer.

Duties to inform the authorities and to inform and consult with the works council exist. Any dismissal based purely on the fact of the transfer is unfair and unlawful.

These rules do not apply to share deals or to a business transfer when the transferor is subject to a liquidation (ie, insolvency) procedure.

**EMPLOYEE REPRESENTATION**

Employees are entitled to establish trade unions within the work organization.

A works council may be elected where an employer employs more than 50 employees. If the number of employees exceeds 15 but does not reach 51, then a works council representative may be elected.

**TERMINATION**

**Grounds**

Termination by notice is possible in cases of indefinite-term employment. In case of fixed-term employment, termination by notice is less common.

For indefinite-term employment, dismissal is only permitted for reasons connected to:
• The employee's performance

• The employee's behavior relating to the employment or

• The operations of the employer.

For fixed-term employment, the employer may only terminate the employment by notice:

• During a liquidation or bankruptcy procedure

• For reasons relating to an employee's performance or

• If maintaining the employment is no longer possible due to an unavoidable external reason.

In the event of a dispute, the employer is obliged to prove that the reason for dismissal is fair, true and reasonable.

Who is subject to termination laws?

All employees are protected against unfair and unlawful termination of employment.

Restricted or prohibited terminations

For some special groups of employees, further termination restrictions apply; thus, the employer may not terminate employment by notice during pregnancy, maternity leave, a leave of absence taken without pay to care for a child, during military service and while participating in human fertilization procedures. Termination of employment by mutual agreement is permitted during these periods.

Third-party approval for termination/termination documents

Not required.

Mass layoff rules

The dismissal of a certain large number of employees due to a change in the employer's operation constitutes a mass layoff and is subject to special information and consultation rules.

In case of dismissal with notice, the employment relationship is terminated at the end of a notice period, which is a minimum of 30 days and a maximum of 6 months depending on length of service or in line with the parties' agreement.

Statutory right to pay in lieu of notice or garden leave

Not applicable.

Severance

Employees are entitled to a severance payment if their employment is terminated on notice by the employer for
operational reasons. The amount of severance pay is a minimum of 1 month’s pay and a maximum of 6 months’ absence fee, depending on length of service. The employment contract may stipulate a higher amount of severance.

**POST-TERMINATION RESTRAINTS**

Post-termination restraints are common in Hungary for employees in senior positions in order to protect the employer’s economic interests for a period post-termination. Such restraints should always be tailored to individual employees.

**Non-competes**

Permissible for up to 2 years, if specifically included in the parties’ agreement, if reasonable in geographical reach and scope, and if the employer pays a sufficient amount of compensation in exchange. For non-compete restraints entered into after July 1, 2012, such compensation must be at least 1/3 of the employee's salary.

**Customer non-solicits**

Permissible, if included in the parties’ agreement. Compensation is payable, but compensation for a non-compete also covers a customer covenant since separate compensation is not required for each different type of covenant.

**Employee non-solicits**

Permissible, if included in the parties’ agreement. Compensation is payable, but compensation for a non-compete also covers an employee covenant since separate compensation is not required for each different type of covenant.

**WAIVERS**

Enforceable, if expressed in a written agreement. Waivers cannot be broadly interpreted.

**REMEDIES**

**Discrimination**

The Equal Treatment Authority is entitled to decide if there has been a violation of law, to prohibit the violating behavior and to impose a fine on the employer, the maximum amount of which is HUF 6 million by law.

Individual lawsuits may also be brought, where the court is entitled to award compensation for pecuniary and non-pecuniary damages.

**Unfair dismissal**

Where the court decides that a termination is unlawful, the employer must pay the employee compensation for
damages. Lost salary forms part of the damages, subject to a maximum of a 12 month absence fee. Any amount earned by the employee during the period after the termination must be deducted.

Reinstatement is also possible, but only in specific cases where the breach is considered serious (e.g., a violation of termination protection).

Failure to inform and consult

In case of failure to inform and consult in connection with a mass layoff or the transfer of a business, the action taken may be considered unlawful, thus carrying a risk of invalidity or a legal dispute. Labor authorities may additionally impose sanctions, including a labor fine.

CRIMINAL SANCTIONS

Not applicable for this jurisdiction.

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LEGAL SYSTEM, CURRENCY, LANGUAGE

India uses a common law legal system, except in the State of Goa, which has a civil code. The official currency is the Indian Rupee (INR). India is a multilingual country with many languages and dialects across the country. The official languages of the union government are Hindi and English. Individual states may set their own official language.

Additionally, in a major move to streamline, simplify and reform Indian employment laws, the Indian government has legislated 4 labor codes. These new codes are expected to significantly impact labor reforms, affecting more than 500 million organized and unorganized workers in India, including work structures such as “gig workers.” The codes are not yet in effect, nor has the government indicated when they will be put into effect. Below is a brief overview of the codes:

1. The Code on Social Security, 2020 (SS Code) intends to consolidate, into a single code, 9 central labor statutes related to social security, which *inter alia* include the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952; the Employees’ State Insurance Act, 1948; the Maternity Benefit Act, 1961; the Payment of Gratuity Act, 1972; and the Unorganized Workers’ Social Security Act, 2008. It proposes to extend the social security benefits to employees and workers, in both the organized and the unorganized sectors, including “gig”

2. The Industrial Relations Code, 2020 (IR Code) intends to consolidate and amend the existing laws relating to conditions of employment in an industrial establishment and proposes to subsume, into a single code, 3 central labor statutes: the Industrial Disputes Act, 1947; the Trade Unions Act, 1926; and the Industrial Employment (Standing Orders) Act. A key feature of the IR Code is that it proposes to increase the threshold for applicability of the provision relating to the requirement of taking the prior permission of the appropriate government before layoff, retrenchment and closure from 100 to 300 workmen. It also seeks to provide fixed-term employees with all the benefits akin to permanent workers (including gratuity), except for notice upon conclusion of a fixed period and retrenchment compensation. The employer has been provided with the flexibility to employ workers on a fixed-term basis based on requirement and without restriction on any sector.

3. The Occupational Health, Safety and Working Conditions Code, 2020 (OSH Code) seeks to consolidate and amend the laws regulating the occupational health, safety and working conditions of the persons


**CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP**

A foreign company without local registration cannot directly engage employees in India. Employers may be formed as sole proprietorship or as a partnership or an incorporated entity. Offshore entities that wish to do business in India either set up subsidiaries or joint venture companies in partnership with other local or offshore entities or, with the approval of the Reserve Bank of India, set up a liaison office, branch office or project office. In addition, proper payroll must be set up to make withholdings and deductions.

Both central and state labor laws impose various procedural requirements on employers, such as obtaining registration, maintenance of registers and records (including muster rolls for employees who present themselves for work), display of notices and filing of returns, which are to be available for inspection by inspectors or appropriate government authorities. The central government and various state governments have come up with single window registration platforms, self-certification schemes and simplified requirements for maintenance of records and registers required under various labor laws with the objective of ease of doing business in India. The government has also taken measures to implement combined registers and provide e-filing of returns to ensure compliance with certain labor legislation.

**PRE-HIRE CHECKS**

*Required*

There is no statutory requirement on an employer to carry out pre-hire background checks, except for employment in certain sectors such as mining, where medical checks are mandatory prior to employment. In the case of foreign citizens, the visa stamp or sticker in the employee’s passport will include the name of the employer, and the employer will be required to provide an undertaking to the Foreigners Regional Registration Office (FRRO) on behalf of the employee to register the employee with the FRRO. Therefore, it is advisable for the employer to undertake a basic immigration check at a minimum. In addition, taking into consideration that termination of employment is not simple in India, it is common for employers to verify the professional and educational qualifications of the candidate.

*Permissible*

Background checks for applicants may be conducted as long as they comply with the fundamental right to privacy, which means that applicant/employee consent should be obtained. Establishments usually have a pre-hire background check policy in place for new hires. Background screening is generally done for education qualification verification, previous employment status, address verification, criminal background verification, reference verification and applicable database verification.
IMMIGRATION

The Government of India issues various types of visas for expatriates (i.e., foreigners) visiting India. A person who is not an Indian citizen and wishes to undertake any work in India must obtain a valid visa. There are two key work-related visas:

- Business Visa, designated as "B" Visa
- Employment Visa, designated as "E" Visa

The duration of such visas depends on the purpose of the visit and is granted at the discretion of the government. Business visas are usually granted to foreigners coming to India, for example, on short visits for trainings or for business meetings. Employment visas are granted to foreigners who come to India for the purpose of employment.

If the stay in India will be for more than 180 days, the visa holder must register with the FRRO or the Foreigners Registration Offices (FRO) within 14 days of arrival.

Restrictions have been imposed on the grant of Indian visas and travel to India from time to time in light of the coronavirus disease 2019 (COVID-19) outbreak. Further, the Indian government has also issued quarantine guidelines for international travelers arriving in India. The guidelines and restrictions on travel to India, visas and quarantine are continuously evolving.

HIRING OPTIONS

Employee

There are two categories of employees: workmen and non-workmen. A workman, as defined under the Industrial Disputes Act, 1947 (ID Act), is any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. Those mainly employed in a managerial or administrative capacity, or those employed in a supervisory capacity (and earning more than INR 10,000 per month) and sales employees (other than those employed in certain notified industries such as the pharmaceutical industry) are non-workmen. The IR Code has replaced references to “workman” with “worker” to make the term more gender neutral, and the definition of worker varies slightly from that of a “workman” under the ID Act and would include sales promotion employees.

Whether an employee is a workman or a non-workman is a matter of fact which can be determined on the basis of the nature of the employee’s duties and the job description. If the employee is a workman, the employer must comply with certain labor and industrial laws, such as the ID Act. If the employee is a non-workman, the terms and conditions of their employment are primarily governed by their contract of employment with the employer. However, in some circumstances, employees (both workmen and non-workmen) may still be governed by the state-specific shops and establishment legislation (S&E Acts), which apply to most companies engaged in commercial activity. Employment may be indefinite, for a temporary term, full-time or part-time. The new labor codes formally recognize fixed-term employment structures and, once the codes are in effect, such employees would be eligible to certain employment benefits that may currently not be available to them, such as gratuity payment.

Legislation has established various employment exchanges, which public establishments and certain private
establishments must notify of any vacancy before a post is filled. No employer is, however, obliged to recruit any person through the exchanges. Further, under the SS Code, the coverage of the statutory employment exchanges has been broadened to include career centers, vacancies and persons seeking services of career centers and employers. The SS Code, when in force, will replace the employment exchanges (Compulsory Notification of Vacancies) Act, 1959.

Recruitment may also be conducted through recruitment agencies, labor contractors, advertisements in newspapers and on-site recruitment at the establishment.

State governments are also entitled to formulate rules prescribing state-specific employment conditions for employers. For instance, Haryana has recently enacted the Haryana State Employment of Local Candidates Act, 2020 (Local Candidates Act) that requires employers in the State of Haryana to reserve a certain amount of job posts/roles for local candidates. More specifically, every employer in Haryana must employ local candidates in at least 75 percent of the posts/roles in which employees are paid gross monthly salaries of less than or equal to INR30,000. The term “local candidate” is defined as a candidate who is domiciled in the State of Haryana. The Local Candidates Act requires every employer to register employees receiving gross monthly salaries less than or equal to INR30,000 on the designated portal within 3 months of the statute coming into force (ie, before April 15, 2022). Further, the Local Candidates Act prohibits employers from employing persons until such registration has been completed.

By way of notification dated January 17, 2022, the Labour Department, Haryana, has also granted certain "deemed exemptions" to the following categories of employers from the application of Local Candidates Act:

1. New startups and new IT/ITES employers for a period of 2 years from the date of commencement of work, business or the manufacturing process. New startups and new IT/ITES units are defined as employers who have established or commenced operations within 2 years of the commencement of the Act (ie January 15, 2022).
2. Short-term employment of up to 45 days.
3. Employers primarily engaged in agricultural activities, as explained further in the order.
4. Employers for domestic work or services in residential homes.
5. Vacancies which are filled up through the promotion, transfer or absorption of surplus staff of any unit of the same employer in Haryana.
6. Any class, post, skill or category of employment notified by the government from time to time, where local candidates are not available.

The government has also issued FAQs on the Local Candidates Act, which can be accessed here. It has clarified that the Local Candidates Act applies to new recruitments made after the commencement of the statute and does not apply retroactively.

Independent contractor

Independent contractors may be engaged. A person is an independent contractor when a company designates the deliverables sought, and the person is free to carry out the work in the manner they deem fit, as long as the timelines and the quality of deliverables are met.

Establishments tend to engage independent contractors or consultants especially for activities where professional expertise is required for the business. Some employers also engage contractors to augment their workforce.
However, if, in reality, the nature of the working relationship is one of employment, there is a risk of misclassification. If misclassified, such "contractors" are entitled to the same employment benefits as the regular workforce.

Definitions of gig workers and platform workers, among others, have been introduced under the SS Code. “Gig worker” is defined as a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship. Further, a “platform worker” is defined as a person engaged in or undertaking platform work. Such workers also work outside the traditional employer-employee relationship in which organizations or individuals use an online platform to access other organizations or individuals to solve specific problems or provide services or any such other activities which may be notified by the central government, in exchange for payment. The SS Code also requires mandatory registration of the gig workers and platform workers.

Agency worker

The practice of employing agency workers or contract labor is prevalent to varying degrees in almost all industries and services. It is more prevalent in labor-intensive sectors such as manufacturing, mining and construction industries.

Legislation regulates the employment of labor through intermediary contractors, regulates the manner of their deployment (including obtaining requisite registration certificates and licenses) and empowers the appropriate government to abolish such arrangements in certain circumstances. The intermediary agency is liable to provide amenities and pay wages including payment of social security, if applicable, to its employees deployed at the client’s (referred to as the principal employer) workplace and, if it fails to do so, the principal employer is responsible, but may recover its costs from the intermediary agency. The OSH Code prohibits principal employers from engaging contract labor in core activities, subject to certain circumstances. The OSH Code provides a list of non-core activities where the prohibition would not apply, such as housekeeping, security and canteen.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

Currently, there is no requirement for a formal written contract of employment, although employers generally enter into written employment agreements. Some state-specific S&E Acts require employers to record certain terms of employment such as wages, designation and work hours. The OSH Code has a statutory requirement for the employers to issue appointment letters to every employee on their appointment in the establishment, with such information and in such form as may be prescribed by the appropriate government. Recent amendments to the Employee’s Compensation Act 1923 (ECA) and the Maternity Benefit Act, 1961 (MBA) require employers to inform employees (in writing) of the benefits available to them thereunder.

In 2017, the government also ratified the Rights of Persons with Disabilities Act, 2016 (RPWD Act). The act requires all employers to notify an equal opportunity policy which includes details of posts that persons with disabilities may apply for, amenities that are provided to disabled persons to allow them to carry out their work functions and the manner of selection for employment for persons with disabilities.

Further, in 2020, the government notified the Transgender Persons (Protection of Rights) Rules, 2020 (TPR Rules) to implement the Transgender Persons (Protection of Rights) Act, 2019 (TPR Act). The TPR Rules require the
employers to publish an equal-opportunity policy for transgender persons which *inter alia* includes details of infrastructural facilities, measures put in for safety and security and amenities to be provided to the transgender persons.

The Industrial Employment (Standing Orders) Act, 1946 (SO Act) applies to employees classified as "workmen" and regulates the terms of the contract to ensure uniformity and protection for that class of employee. In the event of any change in certain conditions of service of workmen (such as wages and working hours) which is prejudicial to them, the employer is required to give 21 days' notice (or more, depending on the state where the workmen are located) before implementing the change. Under the IR Code, the threshold for the requirement to formulate standing orders by industrial establishments has been increased. The IR Code, when in force, will replace the SO Act. The Government of India is also working with industry bodies to ensure that more relevant and industry-specific standing orders are put in place.

A collective agreement is an understanding between trade unions, who represent the interest of the workmen, and employers. Under the ID Act, it is unfair for a recognized trade union or the employer to refuse to bargain collectively in good faith with the other party.

**Probationary periods**

The duration of any trial or probationary period is determined by the contract of employment or the model standing orders. Typically, a trial or probation period is 3 months but may be extended by the employer if they are not satisfied with the progress of the employee.

It is usually easier to terminate the service of a probationer as they do not enjoy all the statutory protection from retrenchment accorded to workmen.

**Policies**

Policies are optional and may be amended without employee consent, if drafted appropriately. However, for workmen employees, certain terms and conditions of service may only be modified after giving 21 days' notice. In addition to employment contracts, an employer usually has various policies that govern its employees' various rights and obligations – for example, leave policies.

**Third-party approval**

No approvals are required for entering into contracts with employees, with the exception of the standing orders, which must be certified by the labor department. The IR Code provides that, where an employer adopts the model standing orders prepared by the government, the same shall be deemed to be certified for the purposes of the IR Code.

**Aadhaar-based registration**

The Ministry of Labour and Employment has notified Section 142 of the SS Code to be effective. Under this section, any employee, unorganized worker or other person shall establish their identity or identity of their family members/dependents through the Aadhaar number for registration and avail themselves of the benefits contemplated under the SS Code. Note that other provisions of the SS Code are not yet in effect. In view of the implementation of Section 142 of the SS Code, the Employees' Provident Fund Organization has also clarified that electronic challan-cum-return will be allowed to be filed only in respect of those employee-members whose Aadhaar numbers are seeded and verified with their respective Universal Account Number.
LANGUAGE REQUIREMENTS

The contract must be in a language understood by both contracting parties. Contracts are generally in English, provided both parties understand it.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

Depends on the category of employee and other factors, including remuneration, location of employee and type of industry. However, pursuant to various labor statutes that govern the workforce, an employee is at a minimum entitled to minimum wages as framed by the relevant state government. Additionally, an employee is entitled to a statutory bonus, provident fund contributions, insurance coverage, maternity benefits and severance dues, if they meet the eligibility norms as set out under these statutes.

Working hours

Working hours are governed by a variety of statutes depending on the nature of the activity undertaken by the establishment and the location of the establishment.

Working hours are governed either by the Factories Act 1948 (Factories Act) or the relevant State specific S&E Act, depending on the nature of the activity undertaken by the establishment. For example, if the establishment is a factory, the Factories Act applies, and if the establishment is involved in a commercial activity, then the local S&E Act applicable in the region in which the establishment is located applies. Generally, these statutes provide for working hour limits both on a daily and weekly basis. The normal daily hour limits range from between 8 and 9 hours, and the usual weekly limit is 48 hours. Under the Factories Act, the daily limit cannot be exceeded without the prior permission of the authorities. The Factories Act will be subsumed under the OSH Code when it comes into force. Under the OSH Code, the daily working hours have been reduced from 9 hours to 8 hours per day. Under the local S&E Act, the normal working hour limits may only be exceeded up to certain prescribed limits.

Some local S&E Acts exempt certain categories of employees (such as managerial employees) or certain establishments (such as establishments involved in information technology) from all or some of the provisions of the statute.

State-specific S&E Acts generally prohibit women employees from working at night. However, certain states have permitted women employees, working in certain industries or across the board, to be employed during the night, subject to the employer adhering to certain requirements, such as ensuring safety and wellbeing of the women employees and providing them adequate facilities, including safe transportation. The OSH Code also allows women to work at night – that is, beyond 7:00pm and before 6:00am, subject to adhering to the conditions relating to safety, holidays, working hours and their consent.

Overtime

If employees are required to work more than the prescribed minimum working hours, they are normally required to be paid at a prescribed overtime rate. Overtime wages are generally calculated at the rate of twice the employee’s ordinary rate of pay.
Wages

India follows the standard of a “minimum wage” as opposed to living wage. State government under the Minimum Wages Act, 1948 fixes minimum wages for time work, piece work and overtime work. The minimum wage to which an employee is entitled is dictated by a variety of factors, including:

- The nature of employment
- The industry in which the employee works and
- The geographic location where the employee works.

The Wage Code introduces a new concept of “floor wages” which is to be determined by the central government after taking into consideration the minimum living standards of a worker. Floor wages are the minimum wages below which state governments cannot fix their state-level minimum wages.

The Payment of Wages Act, 1936 (PWA) provides that wages should be paid at intervals of no longer than a month. Consequently, it is the duty of every employer to ensure that wages are paid to its employees on a monthly basis, the prescribed registers are maintained and that the prescribed notices are displayed on the premises. The statute also regulates the scope and extent of deductions an employer may make from wages. This statute is currently applicable to employees whose monthly wages do not exceed INR 24,000. However, the Wage Code does not prescribe a threshold of wages for applicability of provisions of the PWA to the employees. The eligibility threshold prescribed under the PWA will be obsolete once the Wage Code comes into effect. Some local S&E Acts provide for similar restrictions in relation to permissible deductions that may be made from wages. Additionally, the Equal Remuneration Act, 1976 (ERA) lays down provisions relating to equal remuneration to be payable to both men and women workers and prevention of discrimination based on gender in matters of employment. The Wage Code, when in force, will replace the ERA.

Vacation, holidays and time off

Generally, all employees are entitled to a weekly day off.

Leave entitlement is generally covered by the employment contract. However, where the employer is involved in a commercial activity, the local S&E Acts will apply, and these determine the minimum thresholds concerning holiday entitlement. The thresholds usually range from 12 to 18 days' holiday per year.

The Factories Act provides that every adult worker who has worked in a factory for at least 240 days in a calendar year is entitled to 1 day’s leave with wages for every 20 days of work. Furthermore, under the OSH Code, the number of days an adult worker is required to work in a calendar year to be eligible for annual leave with wages has been reduced from 240 days to 180 days.

Sick leave & pay

Sick leave varies from state to state. Certain local S&E Acts contain provisions concerning sick leave and casual leave, which generally ranges from 12 to 24 days. In addition, the SO Act, if applicable, may contain sick leave provisions. Generally, an employee is entitled to the most beneficial leave entitlement provisions that are provided under the SO Act or S&E Act or the employer’s service rules.
Maternity/parental leave & pay

Indian law provides for maternity and associated leave for female employees. The law does not provide for paternity or parental leave for male employees, and such leave, if provided, would be in accordance with any contractual arrangement entered into with the employer.

Maternity leave is governed by the MBA and Employees’ State Insurance Act, 1948 (ESI Act). The ESI Act currently applies to employees whose monthly salary does not exceed INR 21,000; employees who are not covered by the ESI Act receive their maternity benefits in accordance with the MBA.

Under the MBA, women employees with fewer than 2 surviving children are entitled to maternity leave of 26 weeks. Women with 2 or more surviving children are entitled to 12 weeks of maternity leave. Further, the MBA Act provides 12 weeks leave to women employees who legally adopt a child of less than 3 months of age and to commissioning mothers (i.e., employees who have children through surrogacy).

A pregnant woman suffering from an illness arising out of pregnancy, delivery, premature birth of child, miscarriage, medical termination of pregnancy or tubectomy operation is entitled to leave with payment of maternity benefit for an additional period of 1 month.

A female employee is also entitled to leave with maternity benefit for 6 weeks in the case of miscarriage or medical termination of the pregnancy, and for 2 weeks with payment of maternity leave for a tubectomy operation.

The MBA also provides for nursing breaks and a medical bonus of INR 3,500 to the employee where the employer does not provide for post-natal confinement and post-natal care.

Amendments to the MBA require employers with 50 or more employees in their establishment to provide crèche facilities for their female employees. The crèche must be within a distance prescribed by the government, and female employees must be allowed 4 visits to the crèche each day, including their rest break. If the work assigned to a female employee is such that she can work from home then, after maternity leave, she and the employer may mutually agree to terms and conditions for her to work from home.

DISCRIMINATION

The right to equality is a fundamental right under the Indian Constitution, and state institutions are expressly prohibited from discriminating on the basis of sex, caste, religion, race and place of birth. Although these provisions do not strictly apply to employment in the private sector, employers in the private sector are bound by the ERA. This guarantees equal pay to employees performing the same work, or work of a similar nature, regardless of gender. It prohibits discrimination against women in the context of recruitment, promotion, training and transfer.

The Sexual Harassment of Women at Workplace Act, 2013 (POSH Act) also protects and provides a means of redress for women who suffer from sexual harassment at work. The POSH Act has wide application because its definition of ‘workplace’ covers both public and private establishments and covers regular, ad-hoc or temporary employees, either employed directly or through an agent. The POSH Act requires all offices, hospitals, institutions and other workplaces to have an internal mechanism for addressing complaints related to sexual harassment, including providing for settlement by way of conciliation. The employer must have an internal complaints
committee to look into complaints, hold an inquiry and submit a report to address any issues relating to sexual harassment. The District Officer may establish a local complaints committee for establishments that do not have internal complaints committees due to employing less than 10 workers, or when the complaint is against the employer.

The employer is also prohibited from committing any unfair trade practices listed in the ID Act, including discriminating against workmen.

The RPWD Act prohibits discrimination on the basis of a person’s disability, unless proportionate to achieve a legitimate aim. Under the RPWD Act, an employer must ensure that a person is not denied a promotion merely on the ground of their disability. It also requires all employers to notify and publish an equal opportunity policy with details of facilities and amenities provided to persons with disabilities to enable them to effectively discharge their duties in the establishment. For establishments with 20 or more employees:

- The policy must contain a list of positions suitable for persons with disabilities; the manner of selection of persons with disabilities, post-recruitment and pre-promotion training, preference in transfer and posting, special leave, preference in allotment of residential accommodation, if any, and other facilities; details of the provisions for assistive devices, barrier-free accessibility and other provisions; and details of the liaison officer, and

- A liaison officer must be appointed to look after the recruitment of persons with disabilities and the provision of facilities and amenities.

The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 (HIV Act), in effect since September 10, 2018, prohibits discrimination against a person who is HIV-positive or a person who lives with or has lived with a person who is HIV-positive in matters related to employment, including denial of or termination of employment.

The TPR Act, which has been in effect since January 10, 2019, prohibits discrimination against a transgender person, including denial of services or unfair treatment in employment matters which such as recruitment and promotion. Further, the TPR Act requires every establishment to designate a person to be a complaint officer to handle complaints in relation to the TPR Act.

**BENEFITS & PENSIONS**

**Benefits**

Benefits depend on a number of factors, such as the size of the employer, the industry and the employee’s length of service, including:

- Payment of Gratuity Act, 1972 provides for a lump sum amount payable on termination of employment after 5 years of service. In case of termination due to death or disablement, the employee will be entitled to the lump sum amount irrespective of length of service. The rate of gratuity payable is calculated at the rate of 15 days’ wages for every completed year of service or part thereof in excess of 6 months and is currently capped at INR 2 million. The IR Code introduces a provision for fixed-term employees to be
eligible for gratuity, upon rendering service for a period of 1 year. Further, the IR Code also seeks to provide fixed-term employees with all the benefits akin to permanent workers (including gratuity), except for notice upon conclusion of a fixed period and retrenchment compensation.

- Health benefits: The ESI Act provides for comprehensive medical care to eligible employees and their families. It also provides for cash benefits during sickness and maternity and monthly payments in case of death or disablement. The ESI Act is intended to be subsumed under the SS Code.

- The ECA provides for the payment of compensation to an employee or their family in cases of employment-related injuries, death and temporary or permanent disability, and similar provisions have been included in the SS Code. The SS Code, when in force, will replace the ECA.

- Payment of Bonus Act, 1965 envisages payment of bonus to employees earning less than INR 21,000 per month. This statute is intended to be replaced by the Wage Code. The Wage Code provides that the wage threshold for eligibility is to be determined by the government. Such threshold is yet to be notified.

**Pensions**

Pensions in India may be divided into 3 categories:

- Government pensions covering government employees
- Pension schemes governed by Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act)
- Voluntary pensions

It is mandatory for every Indian employee drawing a monthly salary capped at INR 15,000 per month to be enrolled under the Employees’ Provident Fund Scheme (EPFS). It is mandatory for expatriate workers to be enrolled under the EPFS, irrespective of their salary. Further, the EPF Act is intended to be subsumed under the SS Code. Under the SS Code, the central government is empowered to frame schemes for provident funds, pensions and deposit-linked insurances, and establish specific funds thereunder. In respect to the deposit-linked insurance scheme, the employer is required to pay an amount, up to a maximum of 1 percent of the wages or such other percentage of wages as may be notified by the central government. The applicability threshold under the SS Code will be as notified.

**DATA PRIVACY**

**Employee records and employee access to data**

The Information Technology Act, 2000 (IT Act) covers data protection and violation of personal privacy. This statute safeguards against certain breaches in relation to data from computer systems, prevents unauthorized use of computers and creates liability for damage suffered in the event of unauthorized access, downloading, extraction and copying of data from a computer system or network. It stipulates the penalty for breaches of confidentiality and privacy.

The storage, management and handling of sensitive personal data or information belonging to persons located in India is regulated by the Information Technology (Reasonable security practices and procedures and sensitive
personal data or information) Rules, 2011 (Sensitive Information Rules) enacted under the IT Act. The government of India has also released the Personal Data Protection Bill, 2019 (Data Protection Bill), which is being considered by the Indian government to replace the Sensitive Information Rules.

Sensitive personal data or information is defined under the Sensitive Information Rules to include passwords, financial information, physical, psychological and mental health conditions, sexual orientation, medical records and history, and biometric information.

Any body corporate receiving any of the above types of information as a result of either using the services of an individual or employing an individual must comply with the Sensitive Information Rules regarding processing and storing such information.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

Indian employment law does not provide for the automatic transfer of employees. ID Act provides that, upon transfer of the ownership or management of an undertaking, every "workman" who has been in continuous service in any industry for at least 1 year (ie, 240 days) will be deemed to have been retrenched (ie, terminated) and will be entitled to retrenchment compensation (equivalent to 15 days' average pay for every completed year of continuous service or any part thereof in excess of 6 months) and to receive 1 month's notice or wages in lieu thereof, unless the following applies:

- The employee consents to their employment being transferred to the transferee
- The transferee agrees to provide the employee with continuity of service on terms no less favorable than those which applied prior to the transfer

On and from the date of transfer, the transferee steps into the shoes of the transferor and becomes responsible for liabilities and obligations relating to such workmen including central and state taxes, provident fund contribution, gratuity, accident compensation and employee state insurance contribution.

With respect to liabilities prior to the date of transfer, the transferor and transferee both shall, in accordance with ESI Act and EPF Act, be jointly and severally liable to make provident fund and insurance contributions in respect of the period up to the date of the transfer, provided the liability of the transferee is restricted to an amount equivalent to the value of the assets obtained by way of the transfer.

Employees other than workmen usually resign from their service and are reappointed by the transferee unless they do not wish to transfer. In the event the transferee agrees to provide continuity of service, that continuity will then be reflected in the employment contract.

**EMPLOYEE REPRESENTATION**

In India, the right to form a trade union flows from the fundamental right to freedom of association in the Constitution. Unions must be composed of 7 or more people and must apply to be registered. Indian trade unions are conferred the same status as a body corporate, enjoy perpetual succession and have a common seal. They may sue and be sued in their name. Further, the provisions related to trade unions will be subsumed under the IR Code when it comes into force.
The ID Act renders both employers and trade unions liable for penal sanctions in the event they engage in unfair labor practices.

A collective agreement is an understanding between workmen represented by their trade unions and employers.

Under the ID Act, it is unfair for a recognized trade union and employer to refuse to bargain collectively in good faith with the other party.

**TERMINATION**

**Grounds**

Dismissals should be for "reasonable cause" – for example, redundancy, poor performance or continued ill health – especially in certain states, where the local S&E Act stipulates such a requirement. Otherwise, employees may be dismissed for misconduct (or "for cause"). For workmen, the ID Act defines "retrenchment" as the termination by the employer of the service of a workman for any reason whatsoever, other than as a punishment inflicted by way of disciplinary action. However, "retrenchment" does not include voluntary retirement, reaching the stipulated superannuation age, non-renewal of a contract on expiry of its term, termination arising under such fixed-term contracts or termination of service on the grounds of an employee's continued ill health. The IR Code also specifies that termination of service of a worker as a result of completion of their fixed-term employment is not considered retrenchment.

An employer may for economic reasons reduce the number of its workmen, provided the process as stipulated in the ID Act is followed. The process to be followed will depend on whether the workmen to be retrenched have at least 1 year's (ie, 240 days) continuous employment and are:

- Employed in:
  - Factories/mines/plantations with less than 100 employees or
  - Other establishments

- Employed in factories, mines or plantations where the number of workmen employed in the last year is 100 or more – the ID Act has been amended in certain states to increase this threshold to 300 employees or more. The IR Code has increased this threshold to 300 employees across all states. Additionally, the IR Code also seeks to introduce a “worker re-skilling fund.” The IR Code provides that an employer shall be required to contribute an amount equal to 15 days' wages or such amount as may be notified by the government for every retrenched worker. This amount will then be credited to the account of the retrenched worker in such manner as may be prescribed by the government.

For the "non-workmen" category of employees, their services may be terminated in the manner provided in their employment contracts and subject to complying with the provisions of the relevant S&E Act of the state.

**Employees subject to termination laws**

Where an employer plans to retrench a workman who has been in continuous service for at least 1 year (ie, 240 days) and who is employed in:
Factories, mines or plantations with less than 100 employees or

- Other establishments, prescribed steps must be taken:
  - Where the workman belongs to a particular category of workmen, in the absence of any agreement otherwise, the employer shall ordinarily retrench the workman who was the last person to be employed in that category. If the employer retrenches any other workman, it must record the reason for doing so (Last In First Out Rule).
  - The workman must be given the requisite period of notice or payment in lieu of notice.
  - Retrenchment compensation must be paid to the workman.
  - Notice in the prescribed manner must be served upon the appropriate government authority.

Where an employer plans to retrench a workman who has been in continuous service for at least 1 year (i.e., 240 days) in factories, mines or plantations where the number of workmen employed in the last year is 100 or more (300 in some states), the following steps should be taken:

- The Last In First Out Rule must be followed before retrenching the service of a workman
- The workman must be given the requisite period of notice or payment in lieu of notice
- Prior permission of the appropriate government authority must be obtained (see below) and
- Retrenchment compensation must be paid to the workman.

For "non-workmen," the steps the employer must take will be as stated in the employment contract and the provisions of the relevant S&E Act of the state.

Restricted or prohibited terminations

The level of protection granted to workmen in relation to the termination of their employment is higher where they are employed in factories, mines or plantations where the number of workmen employed in the last year is 100 or more (300 in some states). The ID Act prohibits termination of certain categories of workmen while a dispute is pending between them and their employer except with the approval of a designated authority. Under MBA, it is unlawful for an employer to discharge or dismiss a female employee while they are on statutory maternity leave. Similar protection is provided under ESI Act to employees who earn a monthly salary not exceeding INR 21,000 and who may be in receipt of certain statutory medical benefits provided under ESI Act.

Third-party approval for termination/termination documents

Where an employer plans to retrench a workman who has been in continuous service where the number of workmen employed in the last year is 100 or more (300 or more in some states), prior permission of the appropriate government authority must be obtained by the employer. The appropriate government authority, after making inquiries with the parties and considering the genuineness and adequacy of the relevant factors, will make an order either granting or refusing to grant permission. The order of the appropriate government authority is final and binding on all parties and remains in force for 1 year.
Mass layoff rules

The retrenchment procedure described above will equally apply to mass terminations.

Notice

Notice is required to be given prior to termination. The notice period may vary from state to state, but it is normally 1 month for ordinary dismissal, unless the employment contract provides for a longer notice period.

Where:

- An employer plans to retrench a workman who is employed in factories, mines or plantations with less than 100 employees or
- At other establishments, the employee is entitled to receive 1 month’s notice or payment in lieu of such notice period.

Where an employer plans to retrench a workman who is employed in factories, mines or plantations where the number of workmen employed in the last year is 100 or more (300 in some states), the employee is entitled to receive 3 months’ notice or payment in lieu of such notice period. In both cases, the notice of termination must be in writing and must indicate the reason for retrenchment.

Statutory right to pay in lieu of notice or garden leave

Employers may make a payment in lieu of notice. The right of workmen to receive retrenchment compensation is based on their length of service as of their last working day, irrespective of whether the termination is with immediate effect or after the employee has been asked to serve the notice period.

Garden leave is possible, though there is little case law to suggest how it will be enforced by the courts. It is preferable to include a specific garden leave in the contract of employment and company policy.

Severance

In case of a termination due to redundancy, employers are required to pay retrenchment compensation. Severance or retrenchment compensation equal to 15 days’ average pay for every completed year of continuous service or part thereof in excess of 6 months must be paid to a workman on termination of employment. The provisions of the IR Code, pertaining to retrenchment are aligned with the provisions under the ID Act. However, for the purposes of retrenchment compensation, the same will be calculated at the rate of 15 days’ average pay or average pay of such number of days as may be notified by the appropriate government, for every completed year of continuous service or any part thereof in excess of 6 months. Additionally, as mentioned above, the IR Code also requires employer to contribute an amount equal to 15 days’ wages or such amount as may be notified by the government for every retrenched worker to a “worker re-skilling fund.”

In addition, the employer must pay certain termination benefits to employees who are dismissed, including leave encashment, gratuity payment (for employees, whether workmen or not, with 5 years or more of continuous service), payment in lieu of notice (if no notice is given), statutory bonus payment and any other amounts due under the employment contract. Employees who are being terminated on account of misconduct are not entitled to notice pay or retrenchment compensation.
POST-TERMINATION RESTRAINTS

Non-competes

The Indian Contract Act 1872 provides that every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind is void. Therefore, non-competition clauses which operate during the course of employment are generally not regarded as restraint of trade. However, post-termination non-competition clauses are void and unenforceable.

Customer non-solicits

Possibly enforceable. With post-termination non-dealing/non-solicit provisions, it may be argued that a restriction on activities with customers is a restraint of trade, if by complying the former employee is prejudicially affected from carrying out any trade. Whether such a clause is enforceable or not is, therefore, dependent on the facts of the case.

Non-solicitation provisions, even if they are upheld, generally only entitle the employer to damages, and it is highly uncommon for an Indian Court to grant an injunction preventing the customer from taking their business elsewhere. At best, a claim for damages may succeed against the employee for breach of their contractual agreement if the employer may show that the enforcement of the provision is essential to protect its confidential information as well as that the provision does not prejudice the former employee’s ability to carry on a business or trade and therefore is not in restraint of trade.

Employee non-solicits

Non-solicitation provisions in relation to other employees may be enforced against a former employee, but the courts do not generally grant injunctive relief restraining the employees who are being solicited from leaving the company.

WAIVERS

The doctrine of waiver is recognized in Indian contract law. A waiver must amount to an unambiguous representation arising as the result of a positive and intentional act done by the party granting the concession with knowledge of all the material circumstances. Though any waiver against statutory entitlements given by an employee is unlikely to be enforceable, a generic waiver of contractual rights may be enforced.

REMEDIES

Discrimination

Complaints against unfair labor practices under the ID Act on grounds of discrimination may be filed by a workman or a trade union before the labor courts. Damages for wrongful dismissal will be assessed in accordance with what the employee would have received if the contract had been properly terminated on its terms.

Complaints of sexual harassment under the POSH Act may be filed by the victim with the internal complaints committee (if against another employee) or the local complaints committee (if against the employer). The victim of
sexual harassment may directly file a complaint with the police station having jurisdiction or under the Indian Penal Code, 1860 before the criminal courts.

Complaints for discrimination on the basis of a person’s disability must be raised with the head of the establishment who should take immediate action in accordance with the provisions of the RPWD Act. The RPWD Act provides for a complaint to be raised with the Chief Commissioner or State Commissioner for Persons with Disabilities.

Complaints of discrimination on the basis of gender of a transgender person may be made to the complaint officer who will enquire into the same within the timelines prescribed under the TPR Act and Rules.

Unfair dismissal

Complaints of unfair dismissal are filed before the labor courts or tribunals. The courts may grant an employee reinstatement with full back wages with continuity in service, reinstatement without back wages, only back wages without reinstatement or only monetary compensation and consequential benefits.

Failure to inform & consult

The ID Act stipulates that an employer who proposes to effect any change in its conditions of service including wages, compensatory and other allowances, hours of work, or any rationalization, standardization or improvement of plant or technique which is likely to lead to retrenchment of workmen may not effect such a change without giving those workmen likely to be affected 21 days' notice. In some states, the period of notice required is longer and no notice is required where the change is effected in pursuance of a settlement or award. Notice of change is required only where the change in the terms of service is to the detriment of the workman. Any failure on the part of the employer to adhere to this notice process will render any such change void.

As stated above, recent amendments to the MBA and ECA require employers to inform their employees of the benefits available to them thereunder in writing at the time of their appointment. Further, the POSH Act requires that employers provide/organize training, workshops and awareness programs for their employees to make them aware of the provisions of the POSH Act. Employers are also required under the RPWD Act to notify an equal opportunity policy with the contents (as mentioned above). Additionally, under the TPR Act and related rules, employers are required to publish an equal opportunity policy and display such policy on the company website and in absence of a website, at conspicuous places in the premises.

CRIMINAL SANCTIONS

Sanctions for violating labor statutes include both imprisonment and fine. The extent of such penal provisions will depend on the statute and the nature of the breach.

The Wage Code, SS Code and OSH Code also provides for a single authority viz. inspector-cum-facilitator to carry out inspections of the compliance status of establishments under these codes and advise employers and employees on better compliance. Further, the inspector-cum-facilitator is required to give an opportunity to the employer to comply with the provisions of the said code within a stipulated timeline before initiation of certain prosecution proceedings. Additionally, the labor codes allow for the compounding of offenses, at any time before or after initiation of the prosecution.
KEY CONTACTS

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INDONESIA

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. The official currency is the Indonesian Rupiah (IDR). The official language is Bahasa Indonesia.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign company cannot directly engage employees in Indonesia without having a presence there – for example, a corporate or tax presence. A tax presence requires a permanent establishment, as defined in the relevant legislation, in Indonesia and will commonly take the form of a representative office. The most common structure is to establish a local Indonesian subsidiary in the form of a limited liability company.

An employer must set up payroll in Indonesia and make withholdings for income taxes and social charges under the National Social Security (Sistem Jaminan Sosial Nasional or SJSN) program.

PRE-HIRE CHECKS

Required

Indonesian legislation is silent on pre-hire checks. Thus, there are no requirements or prohibitions on background checks for applicants.

Permissible

Yes.

IMMIGRATION

All expatriates coming to Indonesia require a visa, and those working in the country additionally require a ratification of the employer’s utilization of foreign manpower and a stay permit. Fines and imprisonment may be imposed on those who breach immigration requirements.
HIRING OPTIONS

Employee

On November 2, 2020, Government of Indonesia issued Law No. 11 of 2020 on Job Creation that amends, among others, Law No. 13 of 2003 on Manpower (Manpower Law). The Manpower Law divides employees into two categories:

- Indefinite-term employees (also known as permanent workers): employees who do not fall into the category of definite-term employees or foreign employees.

- Definite-term employees: employees under a definite- or fixed-term employment agreement ("FTC"), also known as contract workers. These employees may perform work to be performed and completed at once or work which is temporary; work whose completion is estimated within a certain period of time (up to 5 years); seasonal work; work that is related to a new product, new activity or additional product that is still in the experimental stage or tryout process; or work involving activities whose kind or nature is non-fixed. At the end of the definite- or fixed-term employment agreement, if the employee has worked for at least 1 month the employee is entitled to compensation according to the term of employment as follows:
  - 12 months continuously: 1 x the monthly salary
  - 1 month but less than 12 months: the service period/12 x the monthly salary
  - more than 12 months: the service period/12 x the monthly salary

Moreover, if either the employer or the employee terminates the FTC before its expiry, the employer must pay the compensation calculated as above and the service period is calculated as the period for which the employee has worked.

A foreigner may only work under a definite term of employment and cannot therefore be a permanent worker but does not otherwise fall under the above rules. For example, a foreigner may fill a position which is open under a Minister of Manpower regulation and is required to perform a transfer of knowledge to Indonesian employee(s). Further, a foreigner is not entitled to compensation according to the term of employment. Their unpaid salaries act as compensation for the remaining term of their work permit.

Employees may be engaged on a full-time or part-time basis.

Independent contractor

May be engaged but should not be provided with fees or benefits which could be deemed as salary or employment benefits as they may be deemed to be employees. The independent contractor should also not be treated as an employee (eg, by imposing statutory working hours). Not separately regulated but will fall under general contract law.

Agency worker

No restrictions apply to activities or manpower regarding what may be outsourced. However, further technical requirements (eg, rights and obligations of an outsourcing company towards its employees) apply to outsourcing.
companies under a government regulation. One of the protections provided under the government regulation is that if an outsourcing company employs FTC employees, the FTC must regulate the protection of the employees in case of a change to the outsourcing company, provided that the work still exists. Further, an outsourcing company is obliged to fulfill its employees’ statutory entitlements.

**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

Fixed-term agreements (ie, those for definite-term employees) must be made in writing and registered with the local Manpower office within:

- 3 days of the signing, if the agreement is registered through online registration; or
- 7 days of the signing, if the agreement is registered through manual registration.

Indefinite-term employment agreements may be made either orally or in writing. Both must contain certain required provisions.

**Probationary periods**

Any employment relationship that includes a probationary period must be documented in writing, and the probationary period cannot be longer than a single period of 3 months. A fixed-term employment contract cannot contain a probationary period; otherwise, the probationary period will be null and void.

**Policies**

No mandatory policies, but the following clauses and policies are recommended: gifts and favor policies for compliance with anti-bribery rules; policies on conflicts of interest with external parties; policies on electronic communications, email and internet abuse and software copyright; policies on code of conduct; policies on data privacy and changes in personal data; clauses in contemplation of natural disaster; clauses related to political activities; clauses related to rotation and relocation (mutasi); clauses related to demotion; clauses related to suspension without termination; and clauses related to personal leave.

**Third-party approval**

Subject to the Employment Contracts section, there is generally no requirement to lodge employment contracts or policies with, or receive approval from, any third party. However, company regulations, similar to an employee handbook, and collective labor agreements (if there is a labor union) are filed with and approved by the authorities. Company regulations are valid once they are approved by the authorities, while collective labor agreements come into force based on the date agreed by an employer and labor union(s).

**LANGUAGE REQUIREMENTS**

Written agreements must be in the Indonesian language, using the Latin alphabet, as Article 28 (1) of Presidential Regulation No. 63 of 2019 on the Use of the Indonesian Language requires such language to be used in official communications in the workplaces of government offices and private entities. The regulation is silent on any
sanction for failing to comply. However, the Indonesian language will prevent employees from claiming that they do not fully understand the information or that they were not informed by the company properly. Dual-language contracts may be prepared, but the Indonesian language provisions will prevail.

**MINIMUM EMPLOYMENT RIGHTS**

Employees entitled to minimum employment rights

All, with certain exceptions in respect to expatriate employees.

**Working hours**

Limit of 7 hours a day, or 40 hours a week, in a 6-day week; or 8 hours a day, or 40 hours a week, in a 5-day week. In this case, the employees will be entitled to 1 day of weekly rest if the employees work for 6 days a week, and to 2 days of weekly rest if the employees work for 5 days a week.

These working hours do not apply in certain sectors or types of work, which may be shorter or longer than the above working hours and must be regulated in the employment agreement, the company regulations, or the collective labor agreement.

In relation to the above, companies which apply shorter working hours have the following characteristics:

a. completion of work is less than 7 hours in 1 day and less than 35 hours in 1 week;

b. flexible working hours; or

c. work may be performed outside of work location.

Certain sectors or types of work that apply longer working hours than as set forth above will be regulated further under minister regulations, but no new ministerial regulations have been issued to date regarding this matter after the enactment of the Job Creation law.

**Overtime**

An employer who employs workers in excess of the standard work hours is obliged to pay overtime, with limited exceptions. Under current regulations, an employer is not obliged to pay overtime to those in certain positions of responsibility which must be expressly regulated. Under the Manpower Law, the overtime payment rate depends on how many hours are worked overtime and the timing of such overtime work. Except for certain sectors of business or work, overtime may be performed for up to 4 hours a day or up to 18 hours a week, and an employer that employs workers beyond their working hours is required to pay overtime wages with the following conditions:

1. for the first hour of overtime work, 1.5 times the hourly wage; and
2. for each subsequent hour of overtime work, 2 times the hourly wage.

If the overtime work is carried out on weekly rest days and/or official holidays for 6 (six) working days and 40 (forty) hours a week, then:
1. Calculation of overtime pay for the first hour up to the seventh hour, paid 2 (two) times the hourly wage; eighth hour, paid 3 (three) times the hourly wage; and the ninth hour, tenth hour, and eleventh hour, paid 4 (four) times the hourly wage;
2. If the official holiday falls on the shortest working day, the calculation of the overtime wage is carried out as follows: the first hour up to the fifth hour, paid 2 (two) times the hourly wage; the sixth hour, paid 3 (three) times the hourly wage; and the seventh hour, the eighth hour, and the ninth hour, are paid 4 (four) times the hourly wage.

If overtime work is carried out on weekly rest days and/or official holidays for 5 (five) working days and 40 (forty) hours a week, then: calculation of overtime wages for the first hour up to the eighth hour, paid 2 (two) times wage hourly; the ninth hour, paid 3 (three) times the hourly wage; and the tenth hour, the eleventh hour, and the twelfth hour, are paid 4 (four) times the hourly wage.

Wages

Wages are established based on a certain period or unit of return. There is no national minimum wage. Provinces or regencies/cities settle their own minimum wage every year. The minimum wage is intended to cover employees working a 40-hour week in the formal sector — that is, any job sector or industry that is recognized, monitored and regulated by the government. The minimum wage does not apply to micro- and small businesses.

Vacation

Minimum of 12 days of paid vacation or annual leave per year after 12 months of uninterrupted service.

Muslim employees may take special leave in order to fulfill religious duties (ie, a pilgrimage to Mecca). In practice, this entitlement only applies once after the employee has worked for a certain period in accordance with the company regulations or collective labor agreement. In practice, pilgrimage leave is usually up to 40 days.

Sick leave & pay

Sick leave is not recognized under the Indonesian Manpower Law and by regulation. When sick, employees are entitled to rest while receiving their usual pay, and the number of paid sick days is not limited.

The employee receives 100 percent of their salary for the first 4 months of the sickness; the percentage of pay decreases thereafter. If the sickness continues after 12 consecutive months, the employee may be terminated with severance payment. Female employees are additionally entitled to 2 days of menstrual leave during the first and second day of menstruation if they do not feel well. Female employees generally do not take such leave.

Maternity/parental leave & pay

Pregnant employees are entitled to 3 months of fully paid maternity leave (rest), of which 1.5 months is to be taken in the prenatal period and the remaining 1.5 months in the post-natal period. The timing of maternity leave is often flexible in practice. A period of 1.5 months of fully paid rest must be given to those who have miscarried.

A male worker is entitled to 2 days of paid paternity leave if his wife gives birth or miscarries.
An employee is entitled to 2 days of paid leave for their child's wedding, circumcision, baptism or death.

**DISCRIMINATION**

Characteristics protected from unlawful discrimination include sex, ethnicity, race, religion and political orientation.

No regulated protection from harassment for employees. Employees who wish to take action against sexual harassment in the workplace may file a claim on the basis of the civil tort law, or the employee may file a criminal report against the party who committed the criminal offense.

**BENEFITS & PENSIONS**

It is mandatory for every company or individual employer to register its employees with the SJSN programs, subject to the minimum number of employees below. The SJSN programs are divided into 2 main categories:

- Public health security, which is applicable for all Indonesian citizens and
- Social security, which covers occupational accident security, death security, old-age security, pension security and loss of job security.

The programs are run by the Social Security Agency (BPJS). The public health security program is managed by BPJS Kesehatan, whereas the social security programs, including occupational accident, death, pension, old-age and loss of job securities, are managed by BPJS Ketenagakerjaan. Employers should register their employees with the BPJS Ketenagakerjaan social security programs which are relevant to the employer's business scale. All employers should register their employees with the BPJS Kesehatan public health security program regardless of the number of employees in their company. The SJSN programs also extend to cover foreign employees who work in Indonesia for at least 6 months. For the loss of job security, the benefits of the program includes cash, access to job market information and job training.

**DATA PRIVACY**

Law No. 11 of 2008 on Electronic Information and Transactions, as amended, restricts the electronic use of private data without the data subject's consent. Under Law No. 39/1999 on Human Rights, each individual has the right to their own privacy and cannot be subjected to an investigation in relation to personal data without their agreement, except on the order of a court or other legitimate authority under prevailing legislation. A new draft of the Data Privacy Law has been prepared, but it is not clear when it will be introduced.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

Employees are not automatically transferred on a business transfer, which includes a merger. Indonesia does not have TUPE or TUPE-style regulations. Employees should be consulted, and the following 3 options are possible in relation to permanent employees:
• The employee is not willing to continue their employment with the new employer.

• The new employer is not willing to accept the employee.

• The new employer and the employee are willing to continue the employment as if no business transfer has occurred, with the employment relationship continuing on the basis of the same terms and conditions (or better) as before the transfer, and usually carrying forward accrued seniority. Employees cannot be given less beneficial terms unless they are terminated by the former employer or made redundant and rehired by the new employer. In that case, the new employer may rehire on its own terms.

Regardless of the reason for termination, in the event of a business transfer as explained above, the employee must be paid a certain amount in severance pay plus a term of service recognition payment, if applicable, and compensation, if applicable.

A non-permanent worker who chooses not to accept a transfer of employment offer, or who is not offered a transfer, is generally entitled to receive the wages for the remaining period of their fixed-term contract.

No protection against dismissal for employees in a business transfer. However, as with nearly all terminations of employment, unless the employer and employee reach agreement, the termination must follow the industrial relations dispute settlement procedure before the employee’s employment may be terminated, and severance entitlements must be paid.

EMPLOYEE REPRESENTATION

Any group of at least 10 employees may establish a labor union which will have the right to:

• Enter into a collective labor agreement with the employer

• Represent workers in industrial disputes and at manpower institutions

• Establish institutions (eg, cooperatives) or carry out activities relating to the improvement of the welfare of the workers and

• Carry out other legal activities in the area of industrial relations.

Criminal sanctions may be imposed on anyone, including the employer, who engages in certain anti-union activity.

TERMINATION

Grounds

A termination must be mutually agreed by the employer and employee, and upon the grounds outlined below, as well as following the industrial relations dispute settlement procedure. The procedure starts from serving a mandatory termination notice within 14 business days prior to the termination (7 business days if the employee is still in probationary period). The termination notice is not required if the termination is due to an urgent reason.

If the employee does not agree with the termination, he/she should convey his/her written objection to the
employer no later than 7 business days upon receipt of the notice.

If the termination dispute arises, the subsequent settlement procedure will be: bipartite, if no settlement is reached, the dispute goes to tripartite negotiations (the most common method is mediation conducted in the local manpower office) and, if no mutual agreement is reached, a lawsuit can be filed to the Industrial Relations Court (IRC) and the court proceedings should be attended until a court ruling is handed down. An appeal to the Supreme Court is possibly submitted. Unless a termination is mutually agreed, a final and binding court ruling should be obtained for a valid termination.

- Termination without cause (ie, where dismissal cannot be avoided, such as in the case of a merger, an acquisition, a reorganization of the company, the employer taking efficiency measures with or without closing down the company (ie due to losses it has suffered or to prevent losses), force majeure, the employer being under a delay of payment process or bankruptcy of the employer; note that the employer still must show grounds for termination).

- Termination with cause (eg, where the employee breaches the employment contract, company regulations or collective labor agreement and commits gross misconduct (termination due to urgent reasons), or other reasons for the termination of the employment relationship that may be stated in the employment agreement, company regulations or collective labor agreement).

- Where the employee has been unable to work for over 6 months due to legal proceedings brought against them, either for a crime that causes the company to suffer a loss or otherwise; however, if the court finds the employee not at fault, the employer must re-employ the employee.

- Where the employee has been absent from work for 5 or more consecutive working days without providing reasons or evidence, and 2 written notices have been given.

- Where the employee has a prolonged sickness for 12 consecutive months.

- The employee has submitted an application to terminate the employment relationship due to the faults of the employer.

- Retirement.

- The employee passes away.

- Voluntarily resign.

Employees subject to termination laws

All employees are subject to termination provisions under the Manpower Law.

Restricted or prohibited terminations

Termination cannot be on the basis of the following circumstances: a worker being absent due to illness according to a physician’s statement for a period of not more than 12 months; a worker having a permanent disability or being ill due to a work accident or due to the employment relationship where, according to a physician’s statement, the recovery period cannot be determined; a worker being unable to carry out work due to the
fulfillment of state duties; a worker performing their religious rituals; a worker getting married; a female worker being pregnant, in delivery, experiencing a miscarriage or breastfeeding her baby; a worker having a blood relationship and/or a marital relationship with another worker within a single company; a worker having reported the employer to the authorities alleging criminal activity by the employer; or a worker forming, becoming a member and/or the manager of a union, or carrying out activities of the union outside working hours, or during working hours with consent from the employer or based on the provisions of an employment agreement, company regulations or a collective agreement.

If the employer purports to terminate an employee’s employment under any of the circumstances above, such termination is void by law, and the employer must continue to employ such employee.

Third-party approval for termination/termination documents

In addition to serving a notice to the employee and if the employee rejects the termination in writing, employers generally must first undergo the industrial relationship termination procedure which starts from having bipartite meeting(s) with the employees, followed with tripartite negotiations (which can be through mediation, conciliation, or arbitration procedures, but mediation is commonly opted by the disputing parties) if bipartite meetings fail to arrive at an agreement. If mutual agreement is not reached in tripartite negotiations, a lawsuit should be filed to the IRC. Employers should obtain a favorable decision on the termination of employment from the IRC or the Supreme Court if the IRC ruling is appealed to the Supreme Court (depending on the type of dispute which can be appealed).

Exceptions to the above apply if a fixed-term contract expires, the termination of employment occurs during the probation period of the worker (save for the mandatory termination notice, and as long as the probation period is specifically provided in writing and the termination procedure is expressly agreed in employment agreement, company regulations or collective labor agreement – although it is now subject to uncertainty due to Law No. 11 of 2020 on Job Creation), due to the worker’s voluntary resignation without pressure or intimidation from the employer, due to a mutually agreed termination or due to the worker reaching retirement age.

There is no applicable pension age for private sector employers in Indonesia. Currently, 58 years is the minimum age to obtain pension security from BPJS Ketenagakerjaan. However, a company may set a different retirement age to apply within the company under the employment agreement, company regulations or collective labor agreement (eg, 55 years).

Mass layoff rules

No specific definition of redundancy or layoff. Employers seeking to make employees redundant should ensure that they provide valid evidence as grounds for the redundancy. Employers must attempt to negotiate a proposed termination with an employee or relevant labor union, as all dismissals on redundancy grounds must follow industrial relations dispute settlement procedures if not mutually agreed. A consultation process must be completed before notice of termination is given to employees. Where a redundancy occurs, the employer must pay the employee severance pay, service pay (if applicable) and compensation pay.

Notice

Although employment cannot be terminated unilaterally through notice, the Indonesian manpower laws and
regulations recognizes the concept of a notice period for termination particularly for permanent employees. A notice of termination must be drawn up in writing specifying the grounds for termination and compensation payable (eg severance package) to the terminated employee. It must be delivered officially and properly by employer to the employee no later than 14 business days prior to the termination.

If the termination is conducted in the probationary period 7 business days’ notice prior to the termination is required. No compensation is payable to a terminated employee during the probationary period.

A termination notice is not required if the termination is due to an urgent reason.

Written notice does not negate the legal requirement to perform the termination procedures as explained under "Third-party approval for termination/termination documents" if the termination is not mutually agreed.

**Statutory right to pay in lieu of notice or garden leave**

Payment in lieu of notice is not a recognized concept under the Manpower Law but if agreed by the employee and employer, it may be given in addition to the statutory termination package.

Employers may require employees to serve a period of garden leave in a form of suspension pending the outcome of industrial relations dispute settlement proceedings. During such period, employees are still entitled to their salary and usual entitlements.

**Severance**

The Manpower Law provides a single severance package formula which applies to most grounds for termination of permanent employees. The Manpower Law provides the following single severance package formula that applies to every lawful termination of employment:

- **Standard severance pay:** 1 month's salary for every year of service, up to 9 months' salary.
- **Service appreciation pay:** 2 months' salary for the first 3 years of service, followed by an additional month's salary for every 3 years of service thereafter, up to a maximum of 10 months' salary for 24 years of service.
- **Compensation:** to cover annual leave that has not expired or been taken, relocation expenses (to return the employee and their family to the place from which they were recruited, if applicable).
- **Other benefits under the employment agreement, company regulations or collective labor agreement, if applicable.**

If the termination is without cause or there is termination on retirement, the employee is entitled to the severance pay amount plus the standard service appreciation pay (if applicable) and compensation. If contested, a termination without cause may result in reinstatement.

**POST-TERMINATION RESTRAINTS**

Enforceable by virtue of the principle of freedom of contract, adopted in the Indonesian Civil Code. However, in
practice, they are very difficult – and sometimes impossible – to enforce.

Non-competes

Permissible in theory, but very difficult – and likely impossible – to enforce.

Customer non-solicits

Permissible in theory, but may be difficult to enforce.

Employee non-solicits

Permissible in theory, but may be difficult to enforce.

WAIVERS

The general freedom of contract provisions of the Indonesian Civil Code allows parties to waive rights; however, the operation of such waiver is not permitted if it results in a violation of public policy or order, or is not applied in good faith.

REMEDIES

Discrimination

The employee is entitled to reinstatement, if applicable, or severance pay, ordinary service pay and ordinary compensation. The Manpower Law does not expressly recognize other damages such as loss of reputation and mental suffering, but these may be recognized if a separate, civil action is raised.

Unfair dismissal

Reinstatement or termination benefit, such as compensation, which includes back pay.

Failure to inform & consult

Employees are entitled to voice their concerns, but no remedial action will be taken.

CRIMINAL SANCTIONS

Imposed on employers who breach the Manpower Law, including where employers participate in anti-union activity; intentionally and without any rights or illegally access computers and/or electronic systems owned by somebody else for the purpose of obtaining electronic information and/or electronic documents; violate workplace health and safety regulations; fail to submit written annual reports on their industrial relations to the Minister of Manpower; or fail to pay severance pay, the term of service recognition payment and/or compensation as entitlements that should have been received upon termination of employment or overtime due; employing the employees for overtime without the their’ consent or exceeding the statutory maximum overtime.
KEY CONTACTS

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IRELAND

LEGAL SYSTEM, CURRENCY, LANGUAGE

Common law. Member of the EU and required to implement relevant EU directives. The official currency is the Euro (EUR). The official language is English.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity may engage employees in Ireland if it has proper payroll registrations, subject to business and corporate tax planning considerations. Through the payroll, withholdings should be made on any remuneration, including benefits in kind, payable to the employees in Ireland, for income tax up to 40 percent, the Universal Social Charge up to 8 percent and social insurance contribution (PRSI) up to 11.05 percent for the employer and 4 percent for the employee. Self-employed independent contractors are generally paid gross and are responsible for their own taxation.

PRE-HIRE CHECKS

Required

Immigration compliance. Criminal record checks only in limited circumstances (eg, for those who work with children, with vulnerable adults and in security).

Permissible

Reference and education checks are common and permissible with applicant consent.

IMMIGRATION

Nationals of the European Economic Area (EEA), UK and Switzerland have the right to work in Ireland. Other nationals require permission to work via an employment permit.

HIRING OPTIONS
Employee

Indefinite, fixed-term, full-time or part-time. Part-time and fixed-term employees have the right not to be discriminated against on the basis of their status.

Independent contractor

Independent contractors may be engaged directly by the company or via a personal services company. Engagement may be subject to misclassification exposure.

Agency workers

Agency workers are common. Agency workers have the right to equal treatment to employees in relation to pay, working hours and other benefits.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

Within 5 days of commencement of employment, an employer must provide the employee with a written statement of core terms of employment. Other minimum terms must be given within 2 months of commencement of employment.

Probationary periods

Permissible. No statutory limit, but 3 to 6 months is common.

Policies

A written health and safety policy, disciplinary and bullying and harassment policies and procedures are mandatory. Grievance and IT-related policies are common and recommended.

Third-party approval

There is no third-party approval requirement in Ireland.

LANGUAGE REQUIREMENTS

No statutory requirement. Usually provided in English. Should be in a language the employee can understand.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All.

Working hours
Working time is limited to 48 hours per week calculated over a 4-month period, subject to certain exceptions. Rules on rest breaks, night work and rest periods between shifts also apply. Zero-hour contracts have recently been prohibited in most circumstances, and banded-hours contracts have been introduced for employees whose actual hours do not reflect their contracted hours.

Overtime

As long as overall pay does not fall below the statutory minimum, there is no obligation to provide pay for overtime worked. A premium must be paid for Sunday work, unless the fact that the individual must work on a Sunday has already been taken into account in determining pay.

Wages

The National Minimum Wage increased from EUR10.20 per hour to EUR10.50 per hour from January 1, 2022.

Vacation

There are 10 public holidays.

Annual leave entitlement is based on hours worked:

- 4 working weeks in a leave year in which the employee works at least 1,365 hours or
- 1/3 of a working week for each month in the leave year in which the employee works at least 117 hours or
- 8 percent of the hours the employee works in a leave year (subject to a maximum of 4 weeks).

Sick leave & pay

A medical certificate is usually required after 3 days' absence. Employees may be entitled to state illness benefit after 3 days, but there is currently no other general right to receive sick pay from the employer. However, statutory sick pay is intended to be legislated for in 2022.

Maternity/parental leave & pay

26 weeks’ ordinary maternity leave, during which the employee may be entitled to maternity benefit from the state, plus 16 additional weeks during which no state benefit is payable. General right to return to work.

24 weeks’ ordinary adoptive leave, during which the employee may be entitled to adoptive benefit from the state, plus 16 additional weeks during which no state benefit is payable. General right to return to work.

26 weeks’ unpaid parental leave to be taken before the child reaches the age of 12 (increased from 22 weeks as of September 2020).

2 weeks’ paternity leave, during which the employee may be entitled to paternity benefit from the state. This entitlement applies to any parent who is a “relevant parent” – the child’s father; the spouse, civil partner or cohabitant of the child’s mother; or adopting mother or sole male adopter, as well as parents of a donor-conceived child. Same-sex couples jointly adopting a child must choose 1 parent to be the "relevant parent."
5 weeks’ paid parent’s leave for a child born or adopted on or after November 1, 2019, which increased from 2 weeks in April 2021. May only be taken within 2 years of the birth of the child or in the first 2 years of adoption.

DISCRIMINATION

Direct discrimination, indirect discrimination, victimization and harassment are prohibited. Employers are under a duty to make reasonable adjustments for persons with disabilities.

Characteristics protected from unlawful discrimination and harassment include gender, age, race/nationality, religion, family status, civil status, disability, sexual orientation and/or membership of the Traveller community.

BENEFITS & PENSIONS

No compulsory benefits beyond those covered by social insurance contributions.

DATA PRIVACY

Ireland is subject to the General Data Protection Regulation (GDPR), which places significant obligations and onerous sanctions for employers. GDPR requires employers to identify a legal basis for their processing of personal data, and it is unlikely that a catch-all consent will enable processing of employee data by an employer. Employers must ensure that they have GDPR-compliant documentation and that they are able to deal with the new rules on subject access requests. There continue to be significant restrictions on monitoring employees, including email and internet use.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

The European Communities (Protection of Employees on Transfer of Undertakings) Regulations transpose the Acquired Rights Directive and provide for automatic transfer of employees with undertakings – or parts of undertakings – which retain their identity post-transfer.

On a business transfer, there is also a duty to inform and consult with employee representatives and a prohibition on transfer-related dismissals, unless dismissal is justified on economic, technical or organizational grounds.

EMPLOYEE REPRESENTATION

Trade unions are prevalent in the manufacturing, transport and public sectors. Many businesses have no union or other worker representation, and works councils are uncommon. Industry-level collective bargaining exists.

No right of recognition for a trade union.

TERMINATION

Grounds
Termination permissible, if a fair process has been followed, on the following grounds: misconduct, capability (including performance and ill health), redundancy, illegality and "some other substantial ground of a kind to justify dismissal."

Employees subject to termination laws

Employees with less than 1 year's service have no protection against unfair dismissal, except in certain circumstances where no service is required, including, for example, dismissals for whistleblowing, dismissals based on discriminatory grounds or trade union membership and activities.

Restricted or prohibited terminations

Transfer-related dismissals are void unless justified on economic, technical or organizational grounds.

In 2019, the EU passed the Whistleblower Protection Directive, which had a deadline of December 17, 2021 for Member States to incorporate into their national laws. The Directive provides for minimum standards that must be adopted, including protections for covered individuals who report a breach of EU law in any prescribed area. An individual who meets the conditions for protection under the Directive is safeguarded from any form of retaliation, as well as from threats of or attempt at retaliation (which is defined broadly). EU Member States are in various stages of implementation. See DLA Piper EU Whistleblower Directive: Implementation Tracker for more information.

Third-party approval for termination/termination documents

- Up to 13 weeks: none
- 13 weeks to 2 years: 1 week
- 2 years to 5 years: 2 weeks
- 5 years to 10 years: 4 weeks
- 10 years to 15 years: 6 weeks
- 15 years or more: 8 weeks

Notice is not required for terminations for gross (ie, extremely serious) misconduct. Longer notice may be agreed and set out in the contract of employment.

Mass layoff rules

Strict information and consultation rules apply in certain collective redundancy situations. The employer must also notify the Minister for Business, Enterprise and Innovation.

Notice

Statutory minimum notice requirements:
• Pp to 13 weeks: none
• 13 weeks to 2 years: 1 week
• 2 years to 5 years: 2 weeks
• 5 years to 10 years: 4 weeks
• 10 years to 15 years: 6 weeks
• 15 years or more: 8 weeks

Notice is not required for terminations for gross (ie, extremely serious) misconduct. Longer notice may be agreed and set out in the contract of employment.

**Statutory right to pay in lieu of notice or garden leave**

There is no statutory right and entitlement to either pay in lieu or garden leave; depends on contract terms.

**Severance**

Severance is payable only to redundant employees with 2 years’ service at the rate of 2 weeks’ pay per year of service plus an additional week’s pay. "Pay" is capped at EUR600 per week. More generous terms are possible and quite common.

**POST-TERMINATION RESTRAINTS**

Considered in restraint of trade and void. However, those that protect the employer’s legitimate business interests may be enforced if reasonable. Restraints must be tailored for the specific business and the risks posed by the employee. Garden leave is common for senior employees.

**Non-competes**

Permissible in narrow, justifiable circumstances. Typical duration is no longer than 3 to 6 months with an absolute maximum of 12 months, depending on the circumstances. The geographical area must also be reasonable and not be extensive.

**Customer non-solicits**

Permissible in specific circumstances. Typical duration is no longer than 3 to 6 months with an absolute maximum of 12 months, depending on the circumstances. The geographical area must also be reasonable and not be extensive.

**Employee non-solicits**

Permissible. Length of restriction depends on the circumstances.
WAIVERS

Enforceable, but employees must have been advised to and afforded the opportunity to take independent legal advice prior to signing a settlement agreement waiving employment rights.

REMEDIES

Discrimination

The Workplace Relations Commission may order re-engagement, re-instatement or award compensation of up to 2 years’ remuneration.

Unfair dismissal

The Workplace Relations Commission may order re-engagement, re-instatement or award compensation of up to 2 years’ remuneration. Claimant is under a duty to mitigate loss.

For a transfer-related dismissal, compensation is not limited to financial loss and may be punitive.

In whistleblowing dismissals, compensation may be up to 5 years’ remuneration.

Failure to inform and consult

In theory, in the context of a mass redundancy, failure to inform and consult may amount to a criminal offense, but prosecution is rare. In the context of a business transfer, such failure can result in up to 4 weeks’ pay per complaining employee.

CRIMINAL SANCTIONS

Failure to notify the Minister for Business, Enterprise and Innovation about mass layoffs is a criminal offense, although prosecution is rare. Employing a non-EEA or Swiss national without the required work permit is also a criminal offense. Failure to provide employees with a written statement containing 5 core terms of employment within 5 days of them commencing employment is also a criminal offense.
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ISRAEL

LEGAL SYSTEM, CURRENCY, LANGUAGE

Strong common law heritage with elements from other legal systems. New Israeli Shekel (ILS). Hebrew and Arabic (English commonly spoken).

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Generally, registration of the employer, either an Israeli subsidiary or a foreign company (branch), is required, in order to set up a bank account for payroll and to open tax and national insurance files for mandatory withholding requirements.

PRE-HIRE CHECKS

Required

Immigration compliance.

Permissible

Reference and education checks are common and permissible with applicant consent. Other types of checks are subject to restrictions (including restrictions on criminal records and credit checks) and must be directly related to the position.

IMMIGRATION

All non-Israeli citizens (except for holders of certain types of residency permits) are required to obtain a work visa from the Israeli Ministry of Interior. Companies wishing to employ non-Israeli citizens must obtain work permits and work visas for their foreign workers from the Israeli Ministry of Interior. Special rules apply to employment of Palestinian citizens.

HIRING OPTIONS
Employee

Indefinite, fixed-term, full-time or part-time. Israeli law requires companies to send candidates periodic notices regarding the status of their applications and to provide notice where the candidate is not chosen for the position.

Independent contractor

Independent contractors can be engaged directly by the company or via a personal services company. Engagement may be subject to misclassification exposure.

Agency worker

Agency workers will typically be either white- or blue-collar workers. Certain agency workers have the right to become employees of the employer after 9 months, and receive rights and benefits equal to those provided to employees at the same workplace. Special rules apply to entities that engage agency workers providing security, catering and cleaning services.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

Common best practices. Within 30 days of commencement of employment, employees must be provided with a notice listing certain employment conditions (as well as written updates with respect to changes in employment terms).

Probationary periods

Permissible, generally relating to shortened prior notice periods only. No statutory limit, but up to 3 months is common practice.

Policies

Common best practices. In most cases, prevention of sexual harassment policy is mandatory. In addition, a computer use policy is required if the employer intends to monitor the employee computer use. In companies in the high-tech sector, employee handbooks are common.

Third-party approval

No requirement to lodge employment contract or policies with or get approval from any third-party.

LANGUAGE REQUIREMENTS

In a language understood by the employee. As a common best practice, it is recommended that all documents will be in English, provided that employee positions require a working knowledge and use of English.

MINIMUM EMPLOYMENT RIGHTS
Employees entitled to minimum employment rights

All.

Working hours

Up to 42 hours a week for full-time employees with a 5 day work week, reducing the length of one particular work day (typically 9 hours per day) each week by 1 hour, with such a day to be decided by the employer. The total number of working hours per month is 182 hours for full-time employees.

Overtime

Up to 3 hours per day and a maximum of 16 hours per week. Pay of 125% of the base hourly wage for the first 2 hours of overtime per day, 150% of the base hourly wage for any additional overtime hours. Special rates for weekend and night work.

Wages

Minimum wage is ILS 29.12 per hour, which corresponds to a monthly salary of ILS 5,300 for a full-time position.

Vacation

Based on seniority. Assuming a 5-day work week, the annual minimum vacation entitlement is 12 business days – 0 to 5 years of employment; 17 business days – 6 to 8 years of employment; 23 business days – 9 or more years of employment. In addition, employees are entitled to 9 days of public holidays per year.

Sick leave & pay

Under law, employees are entitled to 1.5 sick days per month of employment (18 days per year). Sick leave can be accumulated up to a maximum of 90 days. The employer is not required to pay for the first day of sick leave but it may be deducted from the annual sick leave entitlement. On the 2nd and 3rd sick days an employee will be paid 50% of his or her salary, and beginning on the 4th day of sick leave, the employee will be paid his or her full salary until accrued sick days are fully used. During sick leave, benefits are paid in the same ratio as salary. Special rules apply with respect to sick leave due to the illness of a child under the age of 16, a parent or a disabled child. In practice, many companies in Israel pay full salary from the first sick day.

Maternity/parental leave & pay

In general, up to 26 weeks’ maternity leave (may be extended to up to 1 year, based on seniority with employer), paid for up to 15 weeks by the National Insurance Institute; right to return to work for at least 60 days. Men can take what remains of the mother’s leave as paternity leave (after the first 7 weeks of maternity leave which is reserved for the mother) but only if mother returns to work during her maternity leave period. In addition, a man may take 1 day leave on the day his partner/spouse gives birth and up to 5 days leave following the day his spouse/partner gave birth, without the need for employer’s consent. Generally these rules also apply to adoptions, and special rules also apply with respect to multiple births. An employee may elect to commence maternity leave prior to giving birth.
DISCRIMINATION

Characteristics protected from unlawful discrimination and harassment: age, disability, gender, sexual orientation, race, religious belief, nationality, country of origin, place of residency, opinion, political party, participation in military service (including military reserve duty), and matrimonial and parental status.

BENEFITS & PENSIONS

Mandatory pension with minimum contributions (including distributions towards severance pay). Employees are also entitled to transportation expenses. Employees working over a year are entitled to recuperation pay, based on seniority (starting at 5 days) and payable on a monthly or annual basis, according to the employer’s preference. Recuperation pay is much like vacation pay in other jurisdictions and is intended to be used for vacation or recuperation purposes and is normally paid between June and September. An additional benefit known as "Education Fund" is common, and provides tax breaks for employer and employee disbursements set aside for at least 6 years.

DATA PRIVACY

Employees generally must be notified of the terms of the employer’s personal data processing policy, and must consent to it. Registrations in the Databases Register may be required. Special rules apply to data transfer outside Israel. Significant restrictions on monitoring email and Internet use. Monitoring personal email is restricted.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Acquisitions that entail change of ownership will generally not result in changes in employment relations. Transfer of employees to a new employer as part of an asset transfer requires the employees consent. This can be achieved through assumption of employment arrangements by buyer (including seniority-based rights) or through a "fire-rehire" approach (there may still be transfer of residual liabilities deriving from the period of employment preceding the transfer).

EMPLOYEE REPRESENTATION

Trade unions are prevalent in certain sectors (such as industry, transport and the public sector). Many businesses have no union or other worker representation; however, an employer may not object to the incorporation of a workers’ union, and is required to negotiate with the union in good faith. Industry-level collective bargaining agreements are common in certain sectors (such as transport and the public sector). There are no works councils, but trade unions may be entitled to certain information and consultation rights. The terms of collective bargaining agreements may be applied generally to employees or to specific industries by order of the Minister of Labor and, in such event, will become mandatory binding terms on the affected employees.

TERMINATION

Grounds
Any reasonable reason provided that a fair process has been followed in accordance with the procedural requirements for termination. Employees may claim unlawful dismissal on the grounds of discrimination, breach of the employers’ good faith obligation and/or failure to comply with the procedural requirements for termination.

**Employees subject to termination laws**

All employees.

**Restricted or prohibited terminations**

Pregnant women (after 6 months of employment), women on maternity leave and during the first 60 days following their return to work, and employees undergoing fertility treatments may not be dismissed without the prior approval of the Minister of Economy. Employees may not be dismissed during their military reserve duty or for 30 days following their return to work.

**Third-party approval for termination/termination documents**

Not required, apart from the notification below in case of a mass dismissal.

**Mass layoff rules**

No special rules apply, however, if all employees without exception are dismissed, the prior hearing process for termination can be skipped. In the event of dismissal of more than 10 employees, the employer is required to notify the local Employment Services Bureau of the dismissal.

**Notice**

Absent a contractual arrangement setting a longer notice period than the minimum requirements, the notice period for full-time employees is as follows:

- During the 1st year of employment, 1 day for each month during the first 6 months of employment and an additional 2.5 days for every additional month thereafter

- Following completion of at least 1 entire year of employment on a full-time basis, 30 days

The length of the notice period will be less for employees paid on an hourly basis. Most employment agreements include a 30 day contractual notice period.

**Statutory right to pay in lieu of notice or garden leave**

Yes. Payment in lieu of notice in an amount equal to the employee’s salary is permissible. The employer/employee relationship is terminated immediately, and benefits need no longer be paid, unless a contractual provision or binding practice requires otherwise.

Garden leave is permissible on full salary and benefits.

**Severance**

Payable to dismissed employees with at least 1 year seniority. Usually, this is the last monthly salary multiplied by
the number of years the employee worked. Generally, a substantive portion of the severance pay entitlement will have been accrued as part of the employees' managers' insurance and/or pension fund. If the parties provided so in the employment agreement or as a result of a collective bargaining agreement applicable to the employee, the employee will not be entitled to severance pay other than the amount accumulated in the employee's pension fund.

**POST-TERMINATION RESTRAINTS**

**Non-competes**

Although common, generally not enforceable under current Israeli case law.

**Customer non-solicits**

Permissible. Typically not longer than 12 months.

**Employee non-solicits**

Permissible. Typically not longer than 12 months.

**WAIVERS**

Generally enforceable, if the employee receives additional benefits in consideration for signing the waiver commensurate with the rights waived. Employees may not waive certain statutory rights and benefits.

**REMEDIES**

**Discrimination**

Uncapped compensation, based on the claimant's financial loss. Punitive compensation of up to ILS 120,000 without demonstrating damages. Reinstatement or reengagement is possible but rare.

**Unfair dismissal**

Uncapped compensation, usually between 1-24 salaries, depending on circumstances. Reinstatement or reengagement is possible but rare.

**Failure to inform & consult**

In most circumstances employees are not entitled to information and consultation rights, and these rights will generally only apply to organized workers. Accordingly, awarded damages for failure to inform & consult are rare.

**CRIMINAL SANCTIONS**

Failure to comply with various labor laws (such as minimum wage, work hours, unlawful discrimination and prohibited termination) is a criminal offense and may result in criminal proceedings (at least in theory).
KEY CONTACTS

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ITALY

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of European Union (EU), so required to implement relevant EU directives. The official currency is the Euro (EUR). The official language is Italian.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity may engage employees in Italy with proper payroll registrations, subject to business and corporate tax planning considerations. Withholdings for social contributions (ie, up to approximately 30 percent for the employer portion and up to approximately 10 percent for the employee portion) and income tax (up to approximately 43 percent) to be done through payroll. The employer must give notice to the labor authorities that employment has commenced at least 1 day before the commencement of the relationship.

PRE-HIRE CHECKS

Required

Immigration compliance.

Permissible

Criminal and credit reference checks are only permissible for specific roles (eg, certain finance positions) and subject to proportionality requirements. Reference and education checks are common and permissible with applicant consent.

IMMIGRATION

Depending on the duration and reason of the immigration, work permits are required for anyone who is not an Italian national or EU citizen.

HIRING OPTIONS
Employee

Indefinite, fixed-term, full-time or part-time. Part-time and fixed-term employees have the right not to be discriminated against due to their status. Additional engagement options are available, such as on-call employment, job sharing or apprenticeships.

Independent contractor

Independent contractors may be engaged directly by the company, provided that certain requirements are met. Freelancers may also be engaged on an open-term basis, but there is increased misclassification exposure.

Agency worker

Agency workers are common. Agency workers have the right to equal treatment to employees in relation to pay and other benefits terms.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

Written employment agreements are required according to national collective bargaining agreements. Certain clauses are not valid if they are not put in writing (eg, probationary clauses or non-compete covenants).

Probationary periods

Permissible, with statutory limits, depending on the category and level of the employee. The maximum duration is 6 months for executives (dirigenti).

Policies

Permissible but not mandatory.

Third-party approval

No requirement to lodge employment contract or policies with, or get approval from, any third party.

LANGUAGE REQUIREMENTS

No statutory requirements, but all documents should be in Italian.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All, with distinctions based on the employee level pursuant to the applicable collective bargaining agreement.

Working hours
48-hour-per-week limit on working time.

**Overtime**

Statutory limits to overtime depending on the industry sector and the applicable collective bargaining agreement.

**Wages**

Minimum rates are set in the applicable collective bargaining agreement and depend on the category of employee and enrollment level. Under Italian law, there are 4 categories of employees: workers (*operaio*), white-collar employees (*impiegato*), middle managers (*quadri*) and executives (*dirigente*). Collective bargaining agreements set sub-levels within the category of white-collar employees. The applicable collective bargaining agreement may require 13th or 14th salaries.

**Vacation**

Employees are entitled to a minimum of 4 weeks (excluding public holidays) of paid vacation for each year of service. At least 2 weeks of vacation must be taken during the entitlement year. Vacations cannot be replaced by monetary compensation before the employment is terminated. Collective bargaining agreements may provide additional holidays. In addition, Italian law provides for the following public holidays: January 1, January 6, Easter Monday, April 25, May 1, June 2, August 15, November 1, December 8, December 25, December 26 and the day of the patron saint of the place of work.

**Sick leave & pay**

In case of illness or accident, employees cannot be dismissed before a period of time determined by law or by the time the applicable collective bargaining agreement has expired. The entitlement to sick pay depends on the applicable collective bargaining agreement.

**Maternity/parental leave & pay**

Pregnant employees must not work for 2 months before and 3 months after childbirth. Subject to certain conditions, the leave may be taken earlier or later. Female employees cannot be dismissed from the first day of pregnancy until the child is 1 year old, except in certain circumstances (eg, shutting down of the company or just cause). During maternity leave, employees receive an allowance from the social security body (INPS). Subject to and conditional on a specialist doctor’s opinion, mothers may be allowed to work until the 9th month of pregnancy. In these circumstances, mothers therefore take the entire 5 months’ period of maternity leave after the childbirth. Since 2020, fathers are obliged to take 7 days off within 5 months of their child’s birth. They may also take 1 additional optional day as an alternative to 1 day of the mother’s maternity leave. Collective bargaining agreements may contain requirements for company-paid leave. Parental leaves may be taken by the parents until the child is 12 years old.

**DISCRIMINATION**

Employees are protected against direct and indirect discrimination during the course of their employment on several grounds, such as sex, religion, race, color and political opinion. Discrimination is always prohibited, from the hiring procedure to the termination of employment.
BENEFITS & PENSIONS

Enrollment in the social security public system and public insurance of employees is mandatory for all employers.

In addition to the ordinary social security and insurance, collective bargaining agreements provide for supplementary forms of social security or healthcare insurance.

DATA PRIVACY

Employees generally must be notified of personal data processing – and, in certain cases, give consent. Special rules apply to data transfer outside the European Economic Area (EEA). Not possible to control or monitor employees remotely with devices unless upon agreement with works council or authorization of the Labor Office, with the exception of the instruments used by the employee to carry out their work or to detect access or attendance.

Since May 2018, Italy has been subject to the General Data Protection Regulation (GDPR), which introduced significant new obligations and onerous sanctions for employers.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Automatic transfer of those employees who belong to the transferred business or branch of business, without any interruption of the employment, to the transferee, regardless of the employees’ consent. The transferred employees maintain all the rights to which they were entitled with the transferor. The transferor and transferee are jointly liable for entitlements that the transferred employees had at the time of the transfer. Duty to inform and consult with employee representatives.

EMPLOYEE REPRESENTATION

All employees have the right to form, or become members of, labor associations, as well as the right to perform labor-related activities. On the initiative of the employees, a works council may be established in every plant with more than 15 workers within the trade union’s associations that have executed the collective agreement applied in the company. Employees’ representatives are granted certain rights (eg, additional protection in case of transfer and dismissal).

Most companies are subject to mandatory industrywide collective bargaining agreements.

TERMINATION

Grounds

Termination permissible on these grounds:

- Just cause (ie, an irremediable and serious breach of trust – or serious violation of contractual duties – between the parties of the employment relationship. In this case, the contract terminates immediately without notice.)
• Justified reason, which may be subjective (eg, breach of employee's contractual obligation is less serious than just cause) or objective (eg, redundancy). In this case, the contract terminates with notice.

Dismissals must be notified in writing. Reasons for dismissal must be detailed. If the dismissal is due to just cause or subjective reasons, a special disciplinary procedure must be complied with.

Resignation and mutual consent terminations

Under Jobs Act reforms, which are effective as of March 12, 2016, resignations and mutual consent terminations can only be implemented in electronic form; such forms are provided by the Labor Ministry. Within 7 days of the submission of the form, employees have the right to revoke their resignation or mutual termination, provided they do so via electronic means. The Ministerial Decree of December 15, 2015 details the procedure for communicating resignation and mutual consent terminations.

Employees subject to termination laws

All employees except for those under probationary period.

Restricted or prohibited terminations

Discrimination, retaliation, pregnant women, mothers until the child is 1 year old, women within 12 months of marriage and employees with disabilities, under certain conditions.

Third-party approval for termination/termination documents

Dismissal based on objective and economic reasons for employees hired before March 7, 2015 must be preceded by a mandatory administrative conciliation procedure when more than 15 employees are employed in the office where dismissal takes place, or more than 60 in the national territory. Employees hired from March 7, 2015 are not subject to this procedure and may be dismissed without prior involvement of the labor office. Notice to labor authorities must be given within 5 days of the termination of employment.

Mass layoff rules

Yes, strict information and consultation rules apply where 5 or more employees are to be made redundant over 120 days or less.

Notice

Notice is set out in the collective bargaining agreements and varies depending on enrollment level, category and tenure.

Statutory right to pay in lieu of notice or garden leave

The employer or employee may pay an indemnity in lieu of working the notice period. Garden leave is not possible under Italian law.

Severance
In all cases of termination, including for just cause, the employer must pay a severance pay known as TFR, which is equal to the sum of each annual salary divided by 13.5, accrued for any single year. TFR is usually set aside on the books of the company. Employees are also entitled to receive the indemnity in lieu of any holidays or permits accrued and not used, as well as the pro-rata portion of the supplementary salary installments.

**POST-TERMINATION RESTRAINTS**

Those that protect the employer’s legitimate business interests may be enforced if reasonable.

**Non-competes**

Typically no longer than 6-12 months. To be valid and enforceable, such clauses must be agreed in writing and limited in scope, territory, time (ie, up to 3 years and up to 5 years for executives) and must provide an adequate compensation – usually around 25 percent to 50 percent of the annual salary for a 1-year non-compete for the entire Italian territory. If such requirements are not met, the clause is null and void.

**Customer non-solicits**

Permissible.

**Employee non-solicits**

Permissible.

**WAIVERS**

Immediately unchallengeable if signed before a "protected venue" (ie, an administrative, union or judicial office), or challengeable within 6 months after termination.

**REMEDIES**

**Discrimination**

Re-instatement or, alternatively, at the employee's discretion, compensation for damages of 15 months' pay. Additional compensation equal to salary lost from dismissal to re-instatement with a minimum of 5 months' pay.

**Unfair dismissal**

If the company employs up to 15 employees in the same business unit and 60 employees total, the employer may be ordered to rehire the employee or, at its choice, pay compensation for damages, ranging from 2.5 to 6 months' salary.

If the company employs more than 15 employees in the same business unit and 60 employees in total, sanctions are more serious and may result in compensation from 12 to 24 months' pay or, in other cases, forced.

Re-instatement of the employee in the job (or, alternatively, the employee may choose to receive 15 months’ compensation), plus compensation for damages up to 12 months’ pay. Those provisions apply to employees
employed before March 7, 2015.

Under legislation which applies to employees hired from March 7, 2015, in a company that employs more than 15 employees, newly hired employees who are unlawfully dismissed are entitled to compensation for damages of a minimum of 6 months' and a maximum of 36 months' salary. For companies with up to 15 employees, the penalties range from a minimum of 3 up to a maximum of 6 months' salary.

The employer must re-instate an employee in the event of a discriminatory, void or oral termination (or, alternatively, the employee may choose to receive 15 months’ compensation) and must also pay damages of an amount equal to salary from the date of dismissal to the date of re-instatement. Re-instatement (plus compensation for damages of up to 12 months' salary) is also provided for in the event of a dismissal for cause or justified subjective reason when it transpires that the alleged unlawful behavior did not occur.

**Failure to inform & consult**

Failure to follow the collective dismissal procedure leads to compensation of 12 to 24 months' pay. If the breach relates to the social criteria chosen for selecting which employees to dismiss, then re-instatement (or, alternatively, at the employee's discretion, compensation for damages of 15 months' pay) plus additional compensation of up to 12 months' pay.

Employees hired from March 7, 2015 who are unlawfully dismissed are entitled to compensation for damages of a minimum of 6 months' and a maximum of 36 months' salary.

Re-instatement (or, alternatively, 15 months’ compensation) is provided for in the event the termination is solely communicated orally, with the additional payment of compensation for damages for a minimum of 5 months.

**CRIMINAL SANCTIONS**

Generally limited to the most serious cases of failure to comply with regulation regarding health and safety in the workplace. Under certain circumstances, failure to fulfill a court decision may lead to criminal liability.
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JAPAN

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. The official currency is the Japanese yen (JPY). The official language is Japanese.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Foreign entities without a local corporate presence in Japan are generally unable to make proper payroll withholdings. Instead, a local corporate presence is generally required to engage employees in Japan.

Employers are required to withhold national income taxes from employees’ salary each month and make certain social insurance contributions.

PRE-HIRE CHECKS

Required

Generally not required.

Permissible

Criminal background checks are not prohibited but are discouraged by the labor authorities. There should be a strong need to justify such checks. In addition, conducting a criminal background check in Japan is difficult because records are not publicly available. Reference and education checks may be completed with consent, but third parties who receive such requests do not always cooperate. Some employers require a health check at hiring, but employers should not conduct HIV testing and gene diagnosis unless there is employee consent and a strong and legitimate reason to do so.

IMMIGRATION

Foreign nationals who wish to live and work in Japan must obtain the requisite visa. Individuals are also required to have an appropriate status of residence (ie, immigration status), which will determine the extent of the individual’s ability to live and work in Japan.
HIRING OPTIONS

Employee

Most employees will fall into one of 3 categories: regular employee, fixed-term contract employee or dispatched employee. Employment may also be full-time or part-time. As of April 2013, if a fixed-term contract employee concludes a fixed-term contract for more than 5 years with renewal(s) and there has been no break in employment of 6 months or longer, the employer must make the employee an indefinite-term employee upon the employee’s request.

Independent contractor

Independent contractors may be engaged, but care must be taken not to control or direct independent contractors as such action may lead to the independent contractor being deemed an employee.

Agency worker

Hiring dispatched workers is popular because it may lessen some of the burdens associated with the employment relationship. The employees sent by the dispatching agency are direct employees of the agency and not the company utilizing their service. There are strict limitations on the positions that may be filled by dispatched employees, control over the employee and time limits on how long a dispatched employee may be used for the same position. The area is very heavily regulated, and penalties for violations are severe. Only reputable and licensed dispatching agencies should be used. From April 1, 2021, the Ministry of Health, Labor and Welfare’s Guidelines for Equal Pay for Equal Work applies to all companies, and employers are not allowed to have differences in wages or compensation between dispatched worker and regular employees without justifiable reasons if they are doing the same or reasonably similar work.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

No requirement to have a written employment contract, but the employer must provide the employee with certain terms and conditions of employment in writing. If the employer has work rules in place, the work rules may address many of the provisions that must be covered in the writing to be provided to the employee.

Probationary periods

Permissible. No statutory limit, but 3 to 6 months common. An unreasonably long probationary period could be invalid, and 12 months is the upper permissible period in many cases. Terminations are very difficult in Japan, and this is true even during the probation period.

Policies

Employers with 10 or more employees in a workplace are required to create work rules and file them with the Labor Standards Inspection Office. Most of the terms and conditions of employment are stipulated in the employer’s work rules. The work rules constitute part of the employment contract and must stipulate certain
terms and conditions of employment, including wages, working hours and breaks, holidays, termination of employment, disciplinary action and other general matters that apply at the workplace. The working conditions stipulated in work rules are a minimum standard which cannot be diminished by an employment agreement.

Third-party approval

Before filing, the work rules must be submitted to a representative of the majority of employees – or a labor union which represents the majority of employees if one exists – for comments. While employee comments do not need to be accepted by the employer (ie, approval is not required), the comments must be considered in good faith. See above regarding the filing with the Labor Standards Inspection Bureau.

LANGUAGE REQUIREMENTS

The employment agreement and work rules should be provided in the language that is understandable to the employees. If work rules are in a foreign language, a Japanese translation must be filed with the bureau.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

Generally applicable to all employees.

Working hours

Employers cannot require employees to work for more than 8 hours per day or 40 hours per week unless they enter into a labor management agreement with either a labor union or a representative of the majority of employees in the workplace. The agreement must set out the maximum hours of overtime work (currently 45 hours per month and 360 hours per year, unless the agreement includes a special clause allowing for additional overtime in exceptional circumstances).

Overtime

Subject to certain limited exemptions which have been interpreted by the Japanese courts and the Ministry of Health, Labor and Welfare narrowly (eg, persons who are considered managers may be exempted in some cases), employers must pay minimum overtime rates as follows:

<table>
<thead>
<tr>
<th>Overtime Type</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic overtime rate</td>
<td>125 percent of base hourly wage</td>
</tr>
<tr>
<td>Work on a &quot;rest day&quot;**</td>
<td>135 percent of base hourly wage</td>
</tr>
<tr>
<td>Late-night overtime (between 10:00pm and 5:00am)</td>
<td>150 percent of base hourly wage</td>
</tr>
<tr>
<td>Late-night overtime on a &quot;rest day&quot;</td>
<td>160 percent of base hourly wage</td>
</tr>
<tr>
<td>Overtime work in excess of 60 hours/month**</td>
<td>150 percent of base hourly wage</td>
</tr>
<tr>
<td>Late-night overtime in excess of 60 hours/month**</td>
<td>175 percent of base hourly wage</td>
</tr>
</tbody>
</table>
Employers are required to grant at least 1 day off per week, known as a rest day.

Small to mid-sized companies are currently exempted from the additional rate due where hours exceed 60 per month until March 31, 2023.

From April 1, 2019, caps have been placed on overtime, while small to middle-sized companies can enjoy a grace period. Overtime cannot exceed 100 hours in any single month or 80 hours on average for any 2 months over any 6-month period. Overtime also cannot exceed 720 hours in a year.

Wages

Minimum wages are set by prefecture. In addition, certain industries have minimum wages that apply to employees working in that industry.

Vacation

Where an employee has been continuously employed for 6 months and has attendance of at least 80 percent of the total number of working days during that period, they are entitled to a minimum of 10 days’ paid annual leave on the day after completing 6 months of employment. Entitlement increases by 1 day per year for the following 2 years and by 2 days per year thereafter, up to a maximum of 20 days per year. Employees are entitled to carry over unused annual leave for 1 year. There are several national holidays in Japan, and, while not legally required, most employers recognize the national holidays or provide additional holiday pay for workers who are required to work on national holidays. From April 1, 2019, employers are obliged to ensure that employers who have 10 or more annual leave days take at least 5 of those days within a year of the leave being given.

Sick leave & pay

No statutory right to paid sick leave unless the work rules or employment contract provide otherwise.

Maternity/parental leave & pay

A pregnant employee is entitled to maternity leave for a period of 6 weeks before the expected date of birth and 8 weeks after the birth. An employee who lives with and is raising a child up to 1 year of age (and in some cases, up to 2 years of age) is eligible for childcare leave. In addition, employees are eligible for family care leave of up to 93 days (up to 3 times from January 2017) to care for a family member. These absences are unpaid unless otherwise provided in the work rules or the employment contract. An employee generally receives an allowance equivalent to a certain percentage of their salary under the national unemployment insurance scheme.

DISCRIMINATION

Japan’s labor law recognizes the principle of equal treatment of employees. Discriminatory treatment with respect to wages, working hours or other working conditions by reason of nationality, creed or social status is prohibited.
This includes a prohibition against discrimination with respect to dismissal, fringe benefits, pay and all other aspects of the working relationship between employer and employee.

For instance, the Law Respecting the Guarantee of Equal Opportunity and Treatment Between Men and Women in Employment prohibits discrimination regarding gender in recruitment, hiring and employment in Japan.

**BENEFITS & PENSIONS**

There are 4 main types of social security systems with current rates as follows:

- **Workers’ Accident Compensation Insurance**: from 0.25 percent to 6.2 percent, depending on business which an employee engages in, on annual earnings (as of January 2022)

- **Employment Insurance**: with the exception of some businesses, the employee pays 0.3 percent and the employer pays 0.6 percent on annual earnings (March 2021 to April 2022)

- **Health Insurance/Nursing Care Insurance**: The costs are different according to prefecture. In Tokyo, 11.64 percent for an employee between age 40 to 64 and 9.84 percent for an employee under age 40 or over 64 (as of March 2021). The employer and employee equally bear the contribution

- **Employee’s Pension Insurance**: 18.300 percent (April 2021 to March 31, 2022), which is equally borne by the employer and employee

No obligation to provide additional benefits above those already covered, but it is fairly common to provide bonuses and retirement allowances.

Japan has a government-sponsored pension plan that generally pays employees benefits if the employee has been paying into the system for at least 10 years. All persons employed in Japan pay into the system, even foreign nationals working in Japan (subject to any social security totalization agreements).

**DATA PRIVACY**

The receipt, maintenance of and access to personal information relating to an individual is regulated by the Act of Protection of Personal Information. Broadly, upon the collection of such information, the collector must notify the person of the purpose of the use of such information and thereafter must take necessary and proper measures to prevent leakage, loss or damage of that information, and take other reasonable steps to control the security of the personal information. In addition, the party maintaining such information is required to adopt internal regulations designed to ensure the confidential and secure maintenance of such information as long as it is held. Disclosure of personal information to third parties (parent and affiliated companies are considered third parties) is strictly limited.
RULES IN TRANSACTIONS/BUSINESS TRANSFERS

In an acquisition by business transfer, employees of the selling company will continue as employees of the selling company. If employees are to be transferred to the buyer, it is typical for the employee to resign from the selling employer and then be newly hired by the buyer under a new employment contract executed by the employee.

In a merger, the merged entity will cease to exist, and the surviving entity shall succeed to the contractual obligations of the merged entity, including employment agreements. Consequently, employees of the merged entity will automatically become employees of the surviving entity, keeping terms and conditions of employment including those under the merged entity's work rules.

In a statutory company split, the split of the employees should be handled in accordance with the Labor Contract Succession Act, and some employees may automatically transfer with the business that is being transferred. The splitting company must provide notice, in writing, as to the split-plan or agreement to the employees who will be transferred at least 2 weeks before the approval of the company split. An employee:

- Who is mainly assigned to the target business but is not included in the transfer to the purchaser or
- Who is not mainly assigned to the target business but is included in the transfer to the purchaser has the right to object within 2 weeks of receipt of the notice.

EMPLOYEE REPRESENTATION

Labor unions are protected by the Constitution and by statute. All employees have the right to form unions.

There are 2 types of collective agreements. Most common is a labor-management agreement, which is an agreement between management and either the representative of the majority of employees in the workplace or a labor union to which a majority of the employees belong. The second type is a collective bargaining agreement (CBA) which is between a labor union and an employer only. CBAs are not particularly common in Japan the proportion of the workforce in Japan that is unionized has fallen below 20 percent, according to recent statistics.

There are no works or labor management counsels.

TERMINATION

Grounds

Employees in Japan enjoy substantial security when it comes to their employment. Termination of employees generally must be for cause. While employers do have the right to dismiss employees, a dismissal will be regarded as an "abuse of rights" under Japanese law and therefore invalid if a court determines that the dismissal lacks "reasonable" grounds and is not "socially acceptable" a very high standard to meet. The following grounds may possibly be considered reasonable and socially acceptable: very serious misconduct (eg, theft or violence in the workplace); serious insubordination and failure to correct the action after clear warnings are given; serious and ongoing poor performance, after formal warnings have been given, significant training has been provided through performance improvement plans and other positions have been explored, and it is determined that the training is
ineffectual and no other suitable positions exist; provision of material false information about one's background that impacts performance; and a loss of or significant and continuous lack in ability or capability to perform work duties.

See below under "Mass Layoff Rules" regarding economic dismissals.

**Employees subject to termination laws**

Generally, all employees.

**Restricted or prohibited terminations**

Under the Labor Union Act, disadvantageous treatment, including dismissal, based on the fact that an employee is or intends to be a member of a labor union, intends to organize a labor union or engages in a proper act of a labor union is prohibited as an unfair labor practice.

Terminating employees on leave of absence for work-related injury or illness or maternity leave is generally not permissible.

**Third-party approval for termination/termination documents**

Not required.

**Mass layoff rules**

There are no redundancy statutes in Japan. An employer may justify terminations based on the economic conditions of the company. However, 4 conditions must be met in order to justify such a termination: there must be a very strong economic necessity to reduce the workplace, the employer must have taken all reasonable steps to avoid terminations, the employees to be dismissed should be selected using a reasonable and fair standard, and termination procedures must be reasonable and proper.

An employer must notify the Public Employment Security Office in advance if:

- 30 or more employees will leave during a 1-month period
- 5 or more employees who are between the ages of 45 and 65 and reach the retirement age set by the employer are dismissed or otherwise leave due to the employer’s actions within a 1-month period
- An employee who is a foreign national leaves
- An employee with a disability is dismissed (under certain conditions) or
- The employer withdraws a job offer or extends the time of joining the company for new graduates or cancels or downsizes the size of hiring plans of new graduates.

There are some exceptions to these notification requirements.

There may be additional notification requirements set out in any collective bargaining agreement. In any event, if the employee is represented by a union, the employer is expected to consult with the union to fulfill the
good-faith consultation requirement.

Notice

Employers must give at least 30 days' notice of dismissal. It is customary for the work rules to specify that an employee must give 30 days' notice of resignation. However, under the Japanese Civil Code, employees may terminate an employment agreement with 2 weeks' notice. The Civil Code will prevail over any longer requirement. Therefore, if an employee insists on 2 weeks' notice, such notice will be valid.

Statutory right to pay in lieu of notice or garden leave

Payment in lieu of notice is permitted even if there is no contractual right to make such a payment. It is not common for an employee to be placed on garden leave.

Severance

There are no statutory requirements for severance payments in Japan. Given the severe limitations on the employer's right to terminate an employee, most employees are offered a severance payment in exchange for a waiver and voluntary resignation.

POST-TERMINATION RESTRAINTS

Generally enforceable provided that they are reasonable in scope and duration. Japanese courts will closely examine issues such as the geographic scope, whether the restraint is necessary to protect a legitimate business interest and whether consideration was given to the employee.

Non-competes

Generally permitted subject to the limitations noted above, and non-competition covenants should satisfy at least the following conditions in order to be held enforceable:

- The duration is reasonable*
- The geographical scope is reasonably limited and
- The types of jobs or businesses subject to the restriction are limited to jobs or businesses that compete directly or indirectly with the former employer's actual business.

*No maximum is set by law, but 6 months to 1 year is common.

Customer non-solicits

Generally permitted, but enforceability will depend on the facts of the given case.

Employee non-solicits
Generally permitted, but enforceability will depend on the facts of the given case as employees have a constitutional right to move to another company.

**WAIVERS**

To be valid, the waiver must be given voluntarily and knowingly by the employee. In order to avoid any claim from an employee that the waiver is not valid because it was given under duress or as a result of a mistake due to fraudulent representation by the employer, meetings with the employee should be fairly short and attended by only 1 or 2 managers. The employee should be given a reasonable amount of time to consider the document containing the waiver and should not be told that they will be terminated if they do not sign.

**REMEDIES**

**Discrimination**

Discriminatory treatment in salary, working hours and other working conditions against employees based on nationality, creed or social status, or discriminatory treatment against female workers related to salary, shall be punished by imprisonment of not more than 6 months or by a fine of not more than JPY300,000. However, other than that, there is no special enforcement procedure.

**Null and void dismissal**

If an employee's dismissal is held by a court to be null and void, the employee could obtain the following remedies: re-instatement* and/or award compensation. Once the dismissal is held to be null and void, the employee has the right to have unpaid wages for the period from the dismissal to re-instatement plus statutory interest.

*An employee cannot enforce re-instatement unless his/her employer admits liability, but the employer must continue to pay any unpaid amount until re-instatement occurs.

**Unfair labor practice**

A labor union may, within 1 year following the occurrence (or discontinuance) of an unfair labor practice, file a complaint against an employer for such unfair labor practice by seeking a remedial order from the local Labor Commission. This is an administrative procedure, but it is a quasi-judicial process.

**CRIMINAL SANCTIONS**

Some violations are subject to criminal sanctions. For example, violations of the worker dispatch law or failing to pay wages, including overtime allowances, may result in criminal sanctions.
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KENYA

LEGAL SYSTEM, CURRENCY, LANGUAGE

Common law. The official currency is the Kenya Shilling (KES). The official languages are Swahili and English.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

An incorporated or registered entity may engage in business, subject to proper registration as provided under the relevant laws applicable to the business model. The entity must also register with the Kenya Revenue Authority (KRA) and obtain a tax personal identification number (PIN), which is a mandatory requirement for most transactions, including opening a bank account and entering a leasing agreement.

The entity is additionally required to register for the following mandatory employer

- National Social Security Fund (NSSF)
- National Hospital Insurance Fund (NHIF)
- Pay As You Earn (PAYE) and
- National Industrial Training Levy Contributor (NITA).

See the "Benefits and pension" section for more details.

PRE-HIRE CHECKS

Required

- Education qualification checks and referee follow-up for hires
- Criminal record clearance checks
- A locally registered entity to support the application
• For an entity that already employs foreign expats, whether the ratio of 1:3-7 in favor of Kenyans is being loosely observed.

Permissible

The Department of Immigration Services, in conjunction with both the local and international security agencies, are permitted to conduct background checks on all applicants.

IMMIGRATION

All non-citizens must obtain work authorization prior to entering Kenya and commencing or engaging in any form of employment or business in Kenya. There are 2 types of work authorization:

• Entry Class D permit: long-term work authorization issued in tranches of 1 or 2 years up to a maximum of 5 years at a cost of approximately USD4,500 per year and

• Special pass: short-term work authorization issued in tranches of 1, 2 or 3 months up to a maximum of 6 months in a 12-month period at a cost of approximately USD2,000 for 3 months.

The Department of Immigration Services now enforces the 5-year limit prescribed in the law, particularly in respect of Entry Class D permits (i.e., Employment Permits). After the expiry of this period, it is expected that a local national will have been trained to take up the position. The enforcement of this policy is, however, on a case-by-case basis, and a renewal application submitted following the prescribed period must set out a clear justification of why the foreign expertise is required.

When hiring foreign expertise, market testing is recommended to confirm that no Kenyan national can perform the proposed role and that the importation of foreign skillset and expertise is absolutely necessary.

For certain professionals, such as lawyers, architects, engineers, scientists, journalists, psychologists, actuaries, IT specialists, pharmacists and nurses, a foreigner must first obtain clearance and licenses from the relevant regulatory body in Kenya.

HIRING OPTIONS

Employee

Indefinite-term, fixed-term, full-time or part-time. All employees are entitled to fair labor practices, and the employment relationship is regulated either by statute, contract or the collective bargaining agreement (CBA), in the case of unionized employees.

Independent contractor

Independent contractors may be engaged directly by a personal services company, and the terms of service are regulated by the contract for service between the company and the independent contractor.

Where the company contracts independent contractors, it is required to withhold tax on gross payments made to them at the rate of 5 percent for residents and citizens of the East Africa Community and 20 percent for other
non-residents, unless this rate is varied by a double tax treaty between Kenya and the country in which the contractor is resident.

**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

Common best practice. The contract may be oral or written. Any contract for more than 3 months or requiring a task to be performed in an aggregate period exceeding 3 months from the commencement of employment must be provided with certain minimum terms in writing. A written contract must be presented to an employee within 2 months of employment.

**Probationary periods**

The initial probationary period cannot be more than 6 months but may be extended for an additional period of not more than 6 months, with the employee’s consent. A probationary contract must be in writing and state that it is for a probationary period.

**Policies**

Mandatory employment or human resources policy, disciplinary and grievance policy, sexual harassment policy and safety and health policy. Policies must be referenced in the contract of employment for enforceability.

**Third-party approval**

There is no requirement to lodge an employment contract or policies with or receive approval from any third party. The only exceptions are for foreign contracts and employment contracts for seafarers. A foreign contract of service involves the performance of a service outside Kenya by a Kenyan citizen. This type of contract must be in the prescribed form and attested by a labor officer. Before a labor officer can attest a foreign contract, the following conditions must be met:

- The employee has consented without inducement or coercion
- The contract is in the prescribed form
- The terms and conditions are in accordance with the Employment Act 2007
- The employee is medically fit and
- The employee is not employed by another employer during the term of the foreign contract.

With respect to the employment of seafarers, their employment contracts must be approved by the Kenya Maritime Authority.

**LANGUAGE REQUIREMENTS**

No statutory requirements. It is common practice for all official documents to be in English. Statute, however,
requires illiterate employees to have the provisions of their employment contracts explained to them in a language they understand.

**MINIMUM EMPLOYMENT RIGHTS**

**Employees entitled to minimum employment rights**

All.

**Working hours**

A normal working week should consist of no more than 52 hours of work spread over 6 days of the week as well as 1 full rest day.

**Overtime**

Overtime is paid at the rate of 1.5 times the normal hourly rate and at the rate of twice the basic hourly rate on a rest day or public holiday.

**Wages**

In most cases, wages are contractually agreed by the parties. However, for low-skilled employees, the minimum wages are set out in the Regulation of Wages General Order and revised each year by the government.

**Vacation**

Statutory minimum of 21 working days’ vacation with full pay for each completed year of service, in addition to all Gazetted public holidays in Kenya.

**Sick leave & pay**

After 2 consecutive months of service, an employee is entitled to sick leave of no less than 7 days with full pay and, thereafter, to sick leave of 7 days with half pay, in each period of 12 consecutive months of service.

**Maternity/parental leave & pay**

Female employees are entitled to 3 months' maternity leave with full pay (no forfeiture of annual leave on account of maternity).

Male employees are entitled to 2 weeks' paternity leave with full pay.

**Pre-adoptive leave**

The Employment (Amendment) Act, 2021 introduced pre-adoptive leave as a benefit under the Employment Act. Section 29A provides that, where a child is placed in the continuous care and control of an applicant who is an employee, the employee shall be entitled to 1 month's pre-adoptive leave with full pay from the date of the placement of the child.
DISCRIMINATION

Direct and indirect discrimination prohibited, along with victimization and harassment. It is unlawful to discriminate on the basis of race, color, tribe, sex, language, religion, political opinion or affiliation, nationality, social origin, marital status, pregnancy, HIV status or disability.

BENEFITS & PENSIONS

Other than providing housing or a housing allowance, contributions to the NSSF and NHIF statutory pension and medical contribution, an employer is not mandated to provide any further benefits.

NSSF: a basic social security or pension provision that is mandatory for all employees. The employer is required to deduct the employee's contribution from the employee's income and make a matching contribution to the NSSF Fund for the employee's benefit. Currently, contributions are KES200 from the employer and KES200 from the employee.

The NSSF Act, 2013 came into force in January 2014 and sought to increase the contributions by both employers and employees to 6 percent of the employee's pensionable earning, with an equal matching contribution made by the employer. However, this provision has yet to come into force, owing to an ongoing suit in court objecting to the new contribution rates.

NHIF: a contribution made by the employee towards mandatory basic health insurance. The deduction is made entirely out of the employee's income with no matching contribution from the employer. The employer is mandated to deduct the contribution from the employee's monthly income and remit it to the fund.

The NHIF deduction amount is based on the employee's gross pay with a maximum limit of KES1,700 per month. PAYE deductions are on a graduated scale, up to a maximum rate of 30 percent.

The Industrial Training Levy is paid by the employer with respect to each employee at the rate of KES50 per month per employee. Pursuant to the Industrial Training (Training Levy) (Amendment) Order, 2020, an employer with fewer than 100 employees is exempt from the requirement to register with NITA for a period of 12 months with effect from the date of registration of the business.

NHDF: The Finance Act, 2018 brought about an amendment to Section 31 of the Employment Act, 2007 introducing a new section 31A, which requires both the employer and employee to contribute to the National Housing Development Fund at the rate of 1.5 percent of the monthly basic salary, up to a maximum of KES5,000 per month.

Employers are required to remit the contributions by the 9th day of the following month.

This provision is currently suspended by the court. Media reports quoted the government as stating that contributions to the fund will be voluntary.

DATA PRIVACY

The Data Protection Act, 2019 gives effect to Article 31(c) and (d) of the Constitution on the right to privacy. The Act establishes the Office of the Data Protection Commissioner, makes provision for the regulation of the
processing of personal data and provides for the rights of data subjects and obligations of data controllers and processors, among others. The Act is modeled along the lines of the EU General Data Protection Regulations (GDPR).

The Constitution guarantees the right to privacy.

The Computer Misuse and Cyber Crimes Act, 2018 creates various offenses, including the right to privacy, in relation to computer systems.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

Kenya does not have a specific law governing employment on the transfer of a business. Normally, this is treated as a redundancy irrespective of whether alternative employment is offered by the transferee at no less favorable terms with recognition of past years of service with the transferor. Employees are terminated by the vendor, and new employment contracts with the purchaser are to be entered into simultaneously.

**EMPLOYEE REPRESENTATION**

Trade unions are popular with low-skilled staff and civil servants, such as teachers, doctors and nurses. They are almost nonexistent among the managerial staff of most private businesses.

**TERMINATION**

**Grounds**

Termination is permissible, if the statutory procedure has been followed on the following grounds: misconduct, capability (including performance and sickness), redundancy and any other substantial reason that may justify dismissal. The Employment Act strictly requires a disciplinary hearing only in the cases of summary dismissal and termination based on poor performance. The Employment and Labor Relations Court has, however, taken the view that the employer must also accord the employee an opportunity to be heard by a disciplinary panel in all cases of termination. The procedure contemplates an oral hearing.

A disciplinary process is not mandatory for dismissals during a probationary period.

There is a specific process for redundancy dismissals (see “Mass layoff rules”).

**Employees subject to termination laws**

All except employees serving on probationary contracts.

**Restricted or prohibited terminations**

No statutory prohibitions. However, due process must be followed in terminating the contract.

**Third-party approval for termination/termination documents**

No third-party approval is required.
Mass layoff rules

The Employment Act, 2007 sets out the requirements and procedure for effecting a lawful redundancy:

- Where the employee is a member of a trade union, the employer notifies the union of which the employee is a member and the labor officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy, not less than 1 month prior to the date of the intended date of termination on account of redundancy.

- Where an employee is not a member of a trade union, the employer notifies the employee personally in writing, and then notifies the labor officer.

- The employer has, in the selection of employees to be declared redundant, due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy. The last-in-first-out (LIFO) principle is preferred, but it is not the only available one.

- Where there exists a collective agreement between an employer and a trade union setting out termination benefits payable on redundancy, the employer must not place the employee at a disadvantage for being or not being a member of the trade union.

- Where leave is due to an employee who is declared redundant, the employer pays off the leave in cash.

- The employer pays an employee declared redundant not less than 1 month's notice or 1 month’s wages in lieu of notice. Where an employment contract provides for a longer termination notice period, such period applies.

- The employer pays to an employee declared redundant severance pay at the rate of not less than 15 days' pay for each completed year of service.

- The employee is issued with a Certificate of Service at the end of the redundancy process.

This procedure is mandatory and must be followed; otherwise, the termination will be deemed unfair.

Notice

Notice is not required where wages are paid daily. Where the wages are paid periodically, notice is given in writing at a period equivalent to that at which the next payment would be due. Where wages are paid monthly, a month’s written notice is required. The notice period may also be agreed upon contractually, but if none is provided for, notice must be at least 1 month.

Statutory right to pay in lieu of notice or garden leave

Either party is required to give the requisite contractual notice or pay in lieu. In some cases, the employer may decide to allow the employee to be on garden leave instead of working during the notice period on such terms as may be mutually agreed.

Severance
Severance pay is payable at the rate of 15 days for every year worked and is only payable in cases where termination is on account of redundancy. In cases of termination for other reasons other than redundancy, service pay is payable at a rate equal to that of severance pay.

POST-TERMINATION RESTRAINTS

Generally not enforceable. However, those that protect the employer's legitimate business interests may be enforced if reasonable. Must be tailored for the specific business and the risks posed by the employee.

Non-compete

Permissible during employment, but only enforceable in narrow, justifiable circumstances post-termination. Usually contractually agreed upon between the employer and employee.

Customer non-solicit

Permissible during employment, but only enforceable in narrow, justifiable circumstances post-termination. Usually contractually agreed upon between the employer and employee.

Employee non-solicit

Permissible during employment, but only enforceable in narrow, justifiable circumstances post-termination. Usually contractually agreed upon between the employer and employee.

WAIVERS

While a waiver or discharge is legally enforceable provided it is not achieved through intimidation, coercion, inducement or another factor that would vitiate an ordinary contract, it is important to note that it cannot be used by an employer to avoid the liability of paying the employee’s statutory and contractual dues. The court would void such waiver or discharge upon evidence that it was intended to deprive the employee of their lawful dues.

REMEDIES

Discrimination

There is no specific remedy capped on account of discrimination. The employee may, however, sue for damages.

Unfair dismissal

If an employee’s contract is terminated, per statute, they are entitled to the following remedies:
a. The wages that the employee would have earned had they been given the period of notice due under statute or the contract of service.

b. Where dismissal terminates the contract before the completion of any service on which the employee's wages became due, the proportion of the wage due for the period of time for which the employee has worked, and any other loss consequent upon the dismissal and arising between the date of dismissal and the date of expiry of the period of notice referred to in paragraph (a) which the employee would have been entitled to by virtue of the contract.

c. The equivalent of a number of months' wages or salary not exceeding 12 months based on the gross monthly wage or salary of the employee at the time of dismissal.

d. Reinstating the employee and treating them in all respects as if their employment.

e. They were employed prior to their dismissal, or other reasonably suitable work, at the same wage.

Failure to inform & consult

Would generally fall within a claim of unfair termination, and any of the above remedies would be awarded by the court.

**CRIMINAL SANCTIONS**

Although criminal sanctions are not a general concern in employment and labor practices, failing to comply with the provisions of the labor laws is punishable in a court of law either by imprisonment or fines.

**KEY CONTACTS**

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LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law; employment matters are governed by Law No. 6 of 2010 (the Labor Law), as amended. There are also relevant provisions in the Penal Code and Civil Code. The official currency is the Kuwaiti Dinar (KWD). The official language is Arabic.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity cannot directly engage employees in Kuwait. It must instead set up its own legal entity in Kuwait by partnering up with a Kuwaiti partner (individual or company) which must own at least 51 percent of its shares. Once such an entity has been established, it may employ foreign nationals, who need both a residence permit and a work permit, and local nationals, who require a work permit only. The only way around this would be to have a secondment-type arrangement, whereby the foreign company appoints a local entity as its commercial agent and the local entity then sponsors the local or foreign national employees of the foreign principal for their work permit. The foreign or local national then carries out the operations of the foreign principal in Kuwait.

PRE-HIRE CHECKS

Required

Foreign employees must receive prior approval from the Public Authority for Manpower (PAM) and immigration authorities before they may be hired on local employment contracts. The level of background checking and screening carried out by the Kuwait authorities varies according to the nationality of the individual.

Permissible

Generally, employers in Kuwait may not obtain the same level of information from background checks as they can in other jurisdictions and, in most cases, the employees themselves will be required to provide this information.
In order to legally work and reside in Kuwait, all employees except Gulf Cooperation Council (GCC) and Kuwaiti nationals, who require a work permit only, are required to have a residence visa and work permit under the sponsorship of their employer, which must have an entity established in Kuwait. Non-working married women may also be sponsored for their residence visas by their husbands.

Where an employee is only required to work in Kuwait for a short period of time, short-term or temporary employment visas are available as an exception, but at a higher fee. However, there are alternative permits and visas that may be applied for, including business visit visas.

**HIRING OPTIONS**

**Employee**

Indefinite or fixed-term. Part-time employment is legally possible, but is not common. If both parties continue to perform their duties under a fixed-term contract after the expiry of the fixed term, the contract shall be deemed to have been renewed for a fixed-term of the same length.

**Independent contractor**

There is no concept of a consultant, unless individuals have established their own professional license and business, due to the requirement for employees to have sponsorship, which is generally obtained by the employer.

**Agency worker**

There is no general concept of an agency worker or "temp" in Kuwait. Some Kuwaiti-owned employment agencies are licensed to provide manpower on a temporary basis; those workers remain under the agency’s sponsorship. These are mainly for low-level jobs, such as cleaning or security services.

**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

Non-Kuwaiti national employees are required to sign a government employment contract to obtain their work permit and residence visa. This contract is in English and Arabic. Kuwaiti and GCC national employees are not required to sign a standard form of contract, but their regular employment contract with their employer may be required to be submitted to the PAM for review.

**Probationary periods**

Permissible. Maximum duration of 100 working days.

**Policies**

There are no mandatory policies. Employees should be provided with any relevant staff handbook and the employer’s policies, if applicable, on commencement of employment.

**Third-party approval**
The government employment contract must be lodged with PAM to obtain the employee’s work permit and residence visa. Strictly speaking, any contractual changes should be notified to PAM and amended on the filed standard employment contract copy.

**LANGUAGE REQUIREMENTS**

Pursuant to the Labor Law, all employment contracts and records must be in Arabic. Where a foreign language is used in addition to Arabic, the Arabic version shall prevail in case of a dispute.

**MINIMUM EMPLOYMENT RIGHTS**

**Employees entitled to minimum employment rights**

All. Additional rights are also available to young workers (ie, those under the age of 18) and women.

**Working hours**

8 hours per day or 6 hours during Ramadan. This equates to a 48-hour maximum for a 6-day working week, Saturday to Thursday (inclusive) (construction/blue collar/retail etc), or 36 hours for a 6-day week during Ramadan. Over a shorter 5 day working week this is c. 9 ½ hours. The working-hour provisions presume that the employee is working a 6-day week.

**Overtime**

Not to exceed 2 hours per day or 180 hours per year unless the work is essential for preventing the occurrence of a dangerous accident, the repair of any breakdown or avoiding a substantial loss. Additional work periods should also not be required more than 3 times per week or 90 days per year.

There is no carve-out in the Labor Law for senior executive managerial or supervisory positions in respect of the working hours and overtime provisions, although we understand that, in practice, professional employees are often exempted from overtime provisions.

**Wages**

At present, the minimum wage in Kuwait is KD120 per month, which is applicable in most sectors.

**Vacation**

All employees are entitled to fully paid leave for 30 working days in each year of service; the Labor Law has recently been amended to expressly state that annual leave is based on working days. In the first year of service, employees are not entitled to take their leave until they have been in the service of the employer for at least 6 months.

**Sick leave & pay**

An employee is entitled, after completing probation, to up to 75 days’ sick leave per annum, payable as follows:

- First 15 days on full salary
• Next 10 days on 3/4 salary
• Next 10 days on 1/2 salary
• Next 10 days on 1/4 salary
• Thereafter, leave without pay for up to 30 days

Maternity/parental leave & pay

Female employees are entitled to maternity leave with full pay for a period of 70 days. Employees are also entitled to leave without pay for a maximum period of 4 months, to be granted upon request.

There is no legal requirement to provide paternity, adoptive or parental leave in Kuwait.

An employer is not permitted to terminate the employment of an employee or give the employee notice of termination while the worker is on any of the leaves permitted by the Labor Law.

DISCRIMINATION

Disability discrimination. A person with special needs is defined under the Kuwaiti Handicapped Law as "any person suffering from total or partial deficiency or disorder; permanently or temporarily in his physical, sensory, mental, communicative, educational or psychological abilities to an extent reducing the possibility of meeting his normal requirements."

Only Kuwaiti nationals with special needs have the right to work and occupy positions.

Flexible working hours and suitable equipment in order to perform their work must be provided to these employees, and these employees must not face any discrimination.

There are no other discrimination provisions in the Labor Law, except for a provision stating that a female employee shall have the right to the same salary given to a male employee if she performs the same job.

BENEFITS & PENSIONS

In most cases for Kuwaiti national employees and GCC national employees, the employer is required to set up – and contribute to – a pension fund. All other employees may be eligible to receive an end-of-service gratuity (EOSG) on termination, calculated by reference to length of service, unless the employer contracts out of these arrangements with its employees by providing a savings scheme or pension scheme. EOSG is reduced if the employee resigns within the first 10 years of service.

DATA PRIVACY

There are no clear laws in Kuwait comparable with those in the US or Europe concerning the handling and transmission of employees’ personal information, nor do any provisions address the cross-border flow of data.
However, it is advisable to seek prior written consent to the processing of personal data from the employee to the extent necessary to address the various privacy protections set out in Kuwait law, including the protections set out in the Kuwait Penal Code and the Kuwait Constitution.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

Employees transfer through termination and rehire in an asset deal.

**EMPLOYEE REPRESENTATION**

Foreigners are not permitted to form any unions, according to the Kuwaiti Labor Law.

Kuwaiti nationals may form or join a labor union, and only 1 labor union per sector may be formed in the country (eg, a union for engineers or a union for lawyers). Only associations expressly designated for an Islamic purpose, or granted legal status by the government, are permitted to meet openly and freely.

**TERMINATION**

**Grounds**

Termination is possible on the following grounds: by agreement, on the expiry of a fixed-term contract, resignation, incapacity or death and dismissal with notice provided it is for a valid reason or summary dismissal, by reason of any of the grounds listed at Article 41A of the Labor Law.

**Employees subject to termination laws**

All employees.

**Restricted or prohibited terminations**

Employees on any type of leave cannot be terminated while on leave (eg, employees on maternity leave or who are delayed in returning to work due to sickness resulting from pregnancy or labor cannot be terminated).

**Third-party approval for termination/termination documents**

Special consideration should be given in the case of Kuwaiti nationals.

**Mass layoff rules**

None.

**Notice**

3 months’ notice for monthly paid employees; 1 month’s notice for all other employees.

**Statutory right to pay in lieu of notice or garden leave**
None. Entitlement depends on contract terms.

**Severance**

Unless terminated under Article 41A of the Labor Law, employees are entitled to salary and benefits to the termination date, notice (or payment in lieu), payment in lieu of accrued but untaken annual leave, the cost of an airline ticket to repatriate the employee to their home country (unless (i) dismissal is attributable to the employee and the employee has the funds to pay their own costs; or (ii) the employee has obtained alternative sponsorship to remain in Kuwait), an end-of-service gratuity payment and reimbursement of unpaid business expenses. In case of employer termination, the end-of-service gratuity for monthly paid employees is calculated at 15 days’ pay per year for each of the first 5 years of service, and 1 month’s pay for each additional year of service thereafter. Where the employment is terminated by the employee, the employee is entitled to the following:

- After 3 and up to 5 years’ continuous service, 50 percent of the severance pay as calculated
- After 5 years’ continuous service, 2/3 of the severance pay as calculated above and
- After 10 years’ continuous service, the full entitlement to severance pay as calculated above.

The Labor Law only sets out the employee’s entitlement to an end-of-service gratuity in the case of a resignation in respect of indefinite contracts; however, we have been advised by PAM that the same entitlements will apply to employees who resign from limited-term contracts.

The total end-of-service gratuity entitlement an employee may receive is capped at 1.5 years' salary.

**POST-TERMINATION RESTRAINTS**

It is permissible to have restrictive covenants contained in the contract of employment, provided that the employee has become acquainted with the employer’s clients or the secrets of the business and the covenants are reasonably drafted in relation to their duration, geographic scope and the nature of the business to be protected.

Parties are permitted to include a liquidated damages clause in the contract of employment as it is generally not possible to obtain an injunction in Kuwait; however, any such penalty should not be exorbitant.

**Non-competes**

Typically no longer than 12 to 24 months.

**Customer non-solicits**

Typically no longer than 12 to 24 months.

**Employee non-solicits**

Permissible.

**WAIVERS**
Waiver agreements are commonly used, but their enforceability has not been tested by the Kuwait courts and there is no system of precedence in Kuwait.

**REMEDIES**

**Discrimination**

Not applicable.

**Arbitrary dismissal**

There is no cap on the award for arbitrary dismissal; however, awards higher than 3 months’ pay are uncommon in most cases.

**Failure to inform & consult**

Not applicable.

**CRIMINAL SANCTIONS**

Criminal sanctions may be imposed for a variety of reasons, including but not limited to the setting up of a trade union, breach of health and safety obligations, breach of immigration laws, breach of data protection laws and breach of confidentiality.

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LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of the European Union (EU), so required to implement relevant EU directives. The official currency is the Euro (EUR). The official languages are French, German and Luxembourgish.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity may engage employees in Luxembourg with proper payroll registrations, subject to several corporate and tax considerations.

Income tax and the employee's portion of social security contributions are withheld from the remuneration paid out by the employer. The global rate of social security contributions varies from 24.32 percent to 27.20 percent depending on the absentee rate within the company. The employee's portion varies from 12.20 percent to 12.45 percent.

PRE-HIRE CHECKS

Required

Immigration compliance.

Medical check: When recruiting, an employer must ensure that the employee undergoes a medical check with a practitioner of the occupational health service to which the employer is affiliated. The practitioner will decide if the employee's health allows them to fill the position in question. This medical check is compulsory, irrespective of the nature of the work (e.g., office, industrial or construction work). In certain cases, the employer must also organize regular medical examinations during employment.

Permissible

Reference and education checks are common and permissible with the applicant's consent provided that they are compliant with data protection and privacy provisions and are linked to the nature of the position. For the purpose of human resources management and recruitment, the employer may request that any applicant provide a criminal record. In all cases, if the employer makes the decision not to hire the job applicant, the criminal record
must be immediately destroyed. If the job applicant is hired, the employer will only be entitled to retain the criminal records for 1 month.

**IMMIGRATION**

European Union (EU) citizens benefit from the right of free movement, which gives them the right to work and reside in any EU country.

Nationals of the European Economic Area (EEA) and Switzerland have the right to work in Luxembourg.

Third-country nationals who want to reside in Luxembourg with a view to working for more than 3 months must apply for a residence permit with authorization to work. The application must be approved by the Immigration Directorate before entering Luxembourg. However, a third-country national who is the spouse, registered partner or child of a citizen of the European Economic Area (EEA) and Switzerland already working in Luxembourg does not require a work permit. A work permit exemption must be requested.

**HIRING OPTIONS**

Employee

Indefinite, fixed-term, full-time or part-time. Part-time and fixed-term employees have the right not to be discriminated against due to their status.

Independent contractor

Independent contractors may be engaged directly by the employer or via a personal services company. If there is a relationship of subordination between the independent contractor and the company, there is a risk of the relationship being re-qualified as an employment relationship.

Agency worker

Agency workers are common. Temporary lending of workforce is subject to specific conditions and non-discrimination rules.

**EMPLOYMENT CONTRACTS & POLICIES**

Employment contracts

A written contract is required and must be entered into for each employee no later than the date an employee commences work. Employment contracts must provide for certain mandatory particulars, listed by the Labor Code.

Probationary periods

Probationary periods are, in principle, set between 2 weeks and 6 months with 2 exceptions:

- The probationary period cannot be longer than 3 months if the employee's level of professional or
vocational training is below the Technical and Professional Aptitude Certificate for Technical Education (CATP), and

- The probationary period may be up to 12 months when the gross monthly salary provided for in the employment contract is greater than or equal to EUR4,474.31 gross at index 834.

Policies

No specific policy is mandatory.

Third-party approval

No requirement to lodge employment contract or policies with or get approval from any third-party, except for young employees under the age of 18.

LANGUAGE REQUIREMENTS

There is no specific requirement as far as the language is concerned, but the contract must be in a language understood by all the parties. English is commonly used and generally accepted by the courts.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All.

Working hours

The standard number of working hours for employees is 8 hours per day and 40 hours per week.

However, the maximum number of working hours cannot exceed 10 hours per day or 48 hours per week.

Overtime

As a principle, overtime is compensated either with time off equivalent to the excess hours worked (for each overtime hour, 1.5 hours' time off or allocated to a time saving account) or with a supplementary payment of 40 percent. Overtime payment is not required for senior executives.

For companies who apply reference periods, overtime is performed:

- When the hours worked during the reference period exceed the average of 40 hours a week and/or

- when the hours worked exceed a certain threshold:

  - Any hour exceeding 20 percent beyond the normal working hours (ie, 48 hours a week or 192 hours a month) over a reference period of up to 1 month
○ Any hour exceeding 12.5 percent beyond the normal working hours (ie, 45 hours a week or 180 hours a month) over a reference period of over 1 month and less than 3 months or

○ Any hour exceeding 10 percent beyond the normal working hours (44 hours a week and 176 hours a month) over a reference period of exceeding 3 months and up to 4 months.

Wages

EUR2,201.93 minimum wage per month for unqualified employees and EUR2,642.32 per month for qualified employees (index 834.76). A "qualified employee" is an employee who exercises a profession comprising a professional qualification normally acquired by means of education or training attested by an official certificate recognized by the Luxembourg State.

A “qualified employee” is one who holds:

- An official certificate at least equivalent to a vocational skills certificate
- A vocational diploma
- A manual skills certificate
- A certificate of vocational ability and has at least 2 years’ practical experience
- A vocational initiation certificate and has at least 5 years’ practical experience

Certain other employees may also be categorized as "qualified" even if they have no official certificate, subject to having accrued sufficient years of practical professional experience.

Vacation

26 days per year, plus 11 days of public holidays.

Sick leave & pay

An employer must continue to pay the employee in case of sickness leave due to illness or an occupational accident and must do so until the end of the month during which the 77th day of sickness leave occurs, over a reference period of 18 successive months. As from the month following the 77th day of sickness leave, the National Health Fund (Caisse Nationale de Sante or CNS) takes over payment of sickness benefits to the employee on sickness leave.

However, during the sick leave, the CNS may make a "refusal decision" pursuant to which the employee's entitlement to full salary ceases. In such cases, the employer must abide by the refusal decision once the period of 40 days allowed to lodge an appeal against the decision expires.

Maternity/parental leave & pay

Maternity leave starts 8 weeks before the expected date of birth and continues for 12 weeks after the actual date of birth.
During maternity leave, the employee is paid by the National Health Fund (Caisse Nationale de Sante or CNS).

Maternity allowances cannot be lower than the social minimum wage (gross amount of EUR2,201.93 per month as of January 1, 2021) and may not exceed an amount equal to 5 times the social minimum wage (gross amount of EUR11,009.65 per month as of January 1, 2021).

Parental leave has been recently reformed. There are 2 types of parental leave:

- First parental leave directly following the maternity leave and
- Second parental leave to be taken before the 6th birthday of the child (or the 12th birthday in case of adoption).

The amount of parental leave allowance is linked to the employee’s income and replaces, proportionately, the income lost by the employee taking parental leave. The allowance will be set between EUR2,201.93 and EUR3,669.93 per month and will be paid by the Children's Future Fund (Caisse pour l'avenir des enfants). An employee earning less than EUR3,669.93 per month is entitled to an equivalent amount to replace their salary. An employee earning more than EUR3,669.93 per month is entitled to that amount as a maximum.

**DISCRIMINATION**

Discrimination on the grounds of religion or belief, disability, age, sexual orientation, nationality, racial or ethnic origin and sex is prohibited with regard to access to employment, access to all types and levels of vocational guidance, employment and working conditions, and membership of and involvement in an organization of workers or employers.

**BENEFITS & PENSIONS**

Employers have no legal obligations to provide complementary or supplementary social benefits in addition to the social coverage provided for by the social public scheme.

**DATA PRIVACY**

The General Data Protection Regulation (GDPR) has been in force since May 25, 2018. It has been complemented by the Luxembourg law of August 1, 2018 on the organization of the CNPD.

Since then, the processing of personal data is no longer subject to a prior notification to/authorization from the National Data Protection Commission (Commission Nationale pour la Protection des Données or CNPD). However, the processing of personal data for the purpose of supervising employees in the context of employment relationships may only be carried out by the employer under certain conditions.

The employee's consent does not legitimize the processing of data.

In case of conducting employee monitoring, the employer must first notify:

- The employees concerned
• All persons external to the company who may also be concerned (eg, customers, suppliers or visitors) and

• If a surveillance system is used in the workplace, the staff delegation or, failing this, the Inspectorate of Labor and Mines (Inspection du travail et des mines or ITM).

Please note that a number of strict requirements apply in this context according to the Labor Code.

Data subjects have the right to lodge a complaint with the CNPD.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

In case of business transfers falling under the scope of the EU Acquired Rights Directive, as implemented in Luxembourg, all employment contracts existing at the date of the transfer must be maintained with the new employer. All employees’ rights are maintained and transferred to the transferee.

Duty to inform and consult the employees’ representatives and notify the transfer to the ITM.

Any dismissal connected to the transfer would be unfair unless for an economic, technical or organizational reason.

EMPLOYEE REPRESENTATION

Trade unions: Employees as well as employers are organized on a voluntary basis into a number of trade unions, trade and professional federations. Membership is optional.

Staff delegation: A staff delegation must be set up in every business in the private sector employing at least 15 employees under an employment contract during the 12 months prior to the date on which the announcement of elections is made. Joint works councils in every establishment employing at least 150 employees were abolished by the law of July 27, 2015, and their competences were transferred to the staff delegation as from the social elections, on March 12, 2019.

Staff delegation at the level of an economic and social entity: Several companies together form an “economic and social entity” when they have a shared management, identical and complementary activities, a community of employees working with the same interests and a comparable social status. Where such an entity exists, a staff delegation may also be established when requested by at least 2 different companies forming part of the entity.

TERMINATION

Grounds

Termination permissible with immediate effect for gross misconduct or with notice for real and serious cause connected with the employees' attitude, aptitude or for operating needs of the business (ie, economic ground).

Employees subject to termination laws
Restricted or prohibited terminations

Employee representatives, employees who have duly notified their incapacity to work, pregnant women and employees during parental leave, among others.

Third-party approval for termination/termination documents

No third-party approval is required for termination.

Mass layoff rules

- Any employer contemplating dismissing at least 7 employees within a period of 30 days, or 15 employees within a period of 90 days, for 1 or more reasons not related to the employees is required to follow the procedure applicable to mass layoffs.

- The employer must enter into prior negotiations with the employee representatives in order to come to an agreement in respect of the establishment of a social plan. Before negotiations start, the employer must inform the employee representatives in writing of the proposed collective dismissal and provide them with information thereon. Any dismissal notified before a social plan is signed is deemed null and void.

Notice

The notice period, which is not applicable in case of terminations due to gross misconduct, depends on the length of service:

- Less than 5 years: 2 months
- Between 5 and 10 years: 4 months
- More than 10 years: 6 months

Statutory right to pay in lieu of notice or garden leave

No statutory right to pay in lieu of notice. The employee may be released from the obligation to work during the notice period. During the release, the employee is entitled to the same remuneration and benefits as if they were working.

Severance

The amount of the severance depends on the length of service and varies from 1 to 12 months. Not applicable for terminations for gross misconduct.

POST-TERMINATION RESTRAINTS

Non-competes
A non-compete clause must be in writing, and it is deemed null and void when the employee signing the contract of employment is under 18 years of age and/or if the employee's annual remuneration when they leave the employer does not exceed EUR56,906.18 (index 834.76).

A non-compete clause is only valid if it anticipates an employee working as an independent contractor. The non-compete clause is only effective if the restriction:

- Applies to a specific professional sector and to similar activities to those carried out by the former employer
- Does not exceed 12 months and
- Is limited to a geographical area where the employee would be in a position to effectively compete with their former employer and take into consideration the nature and scope of the relevant activities

**Customer non-solicits**

Valid under Luxembourg law to the extent that they do not aim at limiting the employee's right to work as provided for in the Luxembourg constitution.

**Employee non-solicits**

Valid under Luxembourg law to the extent that they do not aim at limiting the employee's right to work as provided for in the Luxembourg constitution.

**WAIVERS**

Waivers are enforceable if they refer to rights which had arisen at the time of the waivers.

**REMEDIES**

**Discrimination**

There are 2 types of discrimination remedies:

- Remedies stipulated by the Labor Code, which entitle the affected employee to uncapped compensation, based on their financial loss and moral damage and
- Remedies stipulated by the Penal Code, which provide for imprisonment of the person who has discriminated for up to a minimum of 8 days and a maximum of 2 years and/or a fine of between EUR251 and EUR25,000.

**Unfair dismissal**

In case of dismissal with notice, the employee is entitled to compensation for moral damages and financial damages. In case of a dismissal for gross misconduct which is deemed unfair, the employee is entitled to a pay in lieu of notice and a severance pay in addition to the compensation for moral and financial damages.
Failure to inform & consult

Criminal sanctions if the employer does not inform/consult or negotiate with the employees’ representatives when required. Prosecution is rare.

CRIMINAL SANCTIONS

Certain mandatory labor law rules are criminally punishable by fines and/or imprisonment, notably:

- Publishing a job offer without informing the Administration of Employment (ADEM)
- Hiring an employee without arranging a compulsory medical examination
- Hiring an employee from outside the EEA without authorization
- Paying wages below the minimum social wage
- Failing to comply with the rules on paid leave and
- Failing to comply with the rules on public holidays.

KEY CONTACTS

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MALAYSIA

LEGAL SYSTEM, CURRENCY, LANGUAGE

Common law and statute. Malaysian Ringgit(MYR)/Ringgit Malaysia(RM). Malay/Bahasa Malaysia and English.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign company can engage employees in Malaysia without local corporate presence subject to administrative, accounting, and tax considerations. The Companies Act also requires foreign corporations to be registered as a foreign company under the Companies Act before "carrying on a business in Malaysia," but the engagement of employees in Malaysia does not necessarily mean a foreign company will be regarded as carrying on a business in Malaysia. As an alternative to incorporating a Malaysian company, a foreign company can also opt to register a branch office or representative office.

There are several arrangements commonly used by foreign companies which engage employees in Malaysia in relation to payroll:

• Running the payroll directly from the foreign entity/location

• Running the payroll through an entity set up in Malaysia

• Outsourcing the payroll to a third party service provider in Malaysia

The most suitable option for a business will depend on the nature of the business, activities carried out by the employees, and accounting and tax considerations.

Employees are responsible for the declaration and payment of income tax, but local employers will be required to make deductions from salary for income tax and employer contributions to the Employees' Provident Fund (EPF), Social Security Organization (SOCSO) and Employment Insurance Scheme (EIS).

PRE-HIRE CHECKS

Required
Immigration compliance for foreign nationals.

Permissible

Pre-employment background checks are not regulated, and the practice differs among industries. Employers should obtain the individual’s consent if the pre-hire checks require accessing, collecting or processing the individual’s personal data to ensure compliance with the Personal Data Protection Act 2010.

IMMIGRATION

Foreign individuals must obtain the required pass, permit or visa from the Immigration Department.

HIRING OPTIONS

Employee

Permanent, fixed-term, full-time or part-time.

Independent contractor

Independent contractors can be engaged directly by the company or via a personal services company. Engagement may be subject to misclassification exposure with financial risk. Work instructions, level of control, exclusivity, access to employee-level benefits and organizational integration, in particular, will jeopardize the independent contractor position.

Agency worker

Agency workers are common in industries where short-term or project-based engagements are the norm, and there are no restrictions on these arrangements.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

The Employment Act 1955 (EA) sets out mandatory terms and conditions of employment for employees within the scope of the EA (EA Employees). EA Employees are generally those who earn up to RM 2,000 per month or are engaged in manual labor.

Employment contracts are usually documented in writing, but verbal contracts are valid. For EA Employees, the EA requires contracts of service for a fixed term exceeding 1 month, or for the performance of a specified piece of work where the time reasonably required for the completion of the work exceeds or may exceed 1 month, to be in writing. Additionally, the EA requires every written contract of service to include a clause setting out the manner in which the contract may be terminated by either party. The format and content of employment contracts for EA Employees are not regulated.

Probationary periods
Probationary periods are not regulated, and it is common for probationary periods of 1-6 months to be imposed. However, probationers are generally entitled to similar security of tenure as full-time permanent employees, and the non-confirmation of employment during or at the end of the probationary period must be with just cause.

**Policies**

No mandatory policy requirements. Depending on the nature of the employer’s business, recommended policies include health and safety, whistleblowing, or detailed grievance or harassment reporting policies.

**Third-party approval**

No requirement to lodge employment contract or policies with or get approval from any third party.

**LANGUAGE REQUIREMENTS**

No statutory requirements other than the requirement for the data privacy consent/notice document pursuant to the Personal Data Protection Act to be in both English and Bahasa Malaysia. It is standard market practice for employment agreements or policies and other employee communications to be in English.

**MINIMUM EMPLOYMENT RIGHTS**

**Employees entitled to minimum employment rights**

The employment terms and conditions of non-EA Employees can be freely negotiated and agreed between the parties.

The EA sets out mandatory terms and conditions related to minimum employment rights for EA Employees. The mandatory terms and conditions include the following:

**Working hours**

EA Employees (with some exceptions) cannot be required to work:

- More than 5 consecutive hours without a period of leisure of not less than 30 minutes
- More than 8 hours in 1 day
- In excess of a spread-over period of 10 hours in 1 day
- More than 48 hours in 1 week; note that the current draft of the Employment (Amendment Bill) 2021 seeks to change this to 45 hours. As of February 1, 2022, the bill is still pending approval in Parliament.

**Overtime**

EA Employees are entitled to overtime benefits for any work carried out in excess of the normal hours of work per day at a rate not less than 1.5 times the hourly rate of pay. It is not common for non-EA Employees to be paid
overtime, but this depends on the practice in the specific industry.

**Wages**

Statutory minimum wage of RM1,100-1,200 per month or RM5.29-5.77 per hour, depending on the employer's location.

**Vacation**

EA Employees are entitled to a paid holiday on 11 of the gazetted public holidays and on any public holiday under the Holidays Act 1951. EA Employees are also entitled to the following minimum paid annual leave entitlements:

- 8 days for every 12 months of continuous service with the same employer if the employee has been employed by that employer for a period of less than 2 years
- 12 days for every 12 months of continuous service with the same employer if the employee has been employed by that employer for a period of 2 years or more but less than 5 years
- 16 days for every 12 months of continuous service with the same employer if the employee has been employed by that employer for a period of 5 years or more

**Sick leave & pay**

EA Employees are entitled to the following sick leave:

- Where no hospitalization is necessary:
  - 14 days in the aggregate in each calendar year if the employee has been employed for less than 2 years
  - 18 days in the aggregate in each calendar year if the employee has been employed for 2 years or more but less than 5 years
  - 22 days in the aggregate in each calendar year if the employee has been employed for 5 years or more
  - 60 days in the aggregate in each calendar year if hospitalization is necessary, as may be certified by such registered medical practitioner or medical officer

**Maternity/parental leave & pay**

All employees are statutorily entitled to paid maternity leave of not less than 60 consecutive days. Pursuant to changes in the current draft of the Employment (Amendment Bill) 2021, paid maternity leave would be increased to 90 days. As of February 1, 2022, the bill is still pending approval in Parliament.

There is no statutory provision for paternity leave, but some employers offer paid paternity leave. The Employment (Amendment Bill) 2021 proposes paid paternity leave of 3 days. As of February 1, 2022, the bill is still pending approval in Parliament.
DISCRIMINATION

There is no statutory protection against discrimination. However, the current draft of the Employment (Amendment Bill) 2021 gives the Director General the power to “inquire into and decide any dispute between an employee and his employer in respect of any matter relating to discrimination in employment [and] make an order”. Non-compliance by an employer with such an order would be an offense. As of February 1, 2022, the bill is still pending approval in Parliament.

BENEFITS & PENSIONS

All private sector Malaysian employees must be members of the Employees’ Provident Fund (EPF), which is a government agency under the Ministry of Finance. The EPF manages employees’ compulsory savings plan and retirement planning. Contributing to and registering with the EPF is mandatory for certain classes of employees, and employees for whom it is not mandatory can also voluntarily opt to contribute to and be registered with the EPF. EPF funds are derived from mandatory contributions from the employers (the rate of contribution is based on the relevant schedule of monthly wages, depending on the classification of the employee) and deductions from the employees’ monthly salaries (the rate of contribution is based on the relevant schedule of monthly wages, depending on the classification of the employee).

The Employment Insurance Scheme (EIS) is a financial support scheme intended to assist employees who have lost their jobs due to retrenchments and other specific reasons. The EIS provides financial support, trainings, and other related assistance to employees for up to 6 months post-termination. Employers and employees are required to contribute 0.2 percent respectively of an employee’s salary to fund the EIS.

DATA PRIVACY

Collection and processing of personal data is governed by the Personal Data Protection Act 2010 (PDPA). Employers must obtain employees’ consent (implied or express) before collecting and processing employees’ personal data, and explicit consent is required if "sensitive personal data" is being collected. Employers must notify their employees of the nature and purpose of information being collected, to whom it is being disclosed, and that the employees have the right to access such data. Employee consent is also required before employee personal data is shared with third parties (for example, external payroll service providers).

As a result of the PDPA, an employee consent/notice document is required. This document has to be bilingual – in both English and Bahasa Malaysia – and is usually a separate document and referenced in the employment contract.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

No provision for automatic transfer of employment. Employees will remain employed by the seller in a sale of business transaction. The "transfer" of employees in a sale of business transaction is effected by a termination (by the seller) and rehire (by the buyer), and in this scenario the seller will be exempted from paying any statutory severance payment if the new offer from the buyer is under terms and conditions of employment not less favorable than those under which the employee was employed by the seller. An employee will not be entitled to statutory severance payment if the employee unreasonably refuses the new offer.
EMPLOYEE REPRESENTATION

Employers and employees have the right to form trade unions, subject to the provisions of the Trade Unions Act 1959 and Industrial Relations Act 1967.

Only a small percentage (less than 10 percent of the total labor force) of employees in Malaysia are organized into trade unions. However, trade unions are very common and established in certain industries, such as banking, manufacturing, and plantations.

TERMINATION

Grounds

Termination must be with just cause. Termination by the employer is usually on the grounds of misconduct, poor performance, redundancy, or closure of business.

Employees subject to termination laws

All employees (EA Employees and non-EA Employees, including probationers) are protected from unfair dismissal or unfair termination of employment.

Restricted or prohibited terminations

There are specific prohibitions restricting termination of an employee by reason of his joining a trade union, or a female employee while she is on maternity leave.

Third-party approval for termination/termination

No approval required, unless provided for in a collective agreement.

Mass layoff rules

When implementing a retrenchment exercise, employers are encouraged (but not required) to abide by the guidelines in the Code of Conduct for Industrial Harmony ("Code"). Note that there is no headcount threshold and these guidelines apply even if the retrenchment exercise involves only one employee. The employer must also inform the nearest Department of Labor at least 1 month before the retrenchment takes place. Employers must apply fair and objective selection criteria, and are generally required to abide by the "Last In, First Out" (LIFO) principle (departure from LIFO is acceptable, provided the employer can show that an alternative, fair and objective selection criteria was used instead) and any objective selection criteria set out in any collective agreement.

Notice

EA Employees are entitled to the following minimum notice periods under the EA:

- 4 weeks' notice if the employee has been so employed for less than 2 years on the date on which the notice is given
• 6 weeks' notice if the employee has been so employed for 2 years or more, but less than 5 years on such date

• 8 weeks' notice if the employee has been so employed for 5 years or more on such date

For non-EA Employees, the notice period is as stated in the employment contract, and if the contract is silent, a "reasonable" notice period will be implied. What constitutes a "reasonable" notice period will depend on the circumstances (e.g., employee’s role or seniority in the organization, notice periods for other employees, past practice), but should ordinarily be expected to be between 1-6 months.

In very limited circumstances, an employer may be entitled to summarily dismiss an employee, where it can be shown that the employee is guilty of a serious misconduct which is so serious that it renders the continuation of the employment relationship impossible. The burden of proving that the misconduct was serious enough to warrant summary dismissal lies with the employer.

Statutory right to pay in lieu of notice or garden leave

For EA Employees, the EA provides for termination without notice with the making of a payment in lieu of notice. For non-EA Employees, it is subject to the employment contract. No statutory provision for garden leave.

Severance

An EA Employee who has been employed for 12 months or more is entitled to the following minimum severance payments pursuant to the Employment (Termination and Lay-Off Benefits) Regulations 1980:

• 10 days’ wages for every year of employment under a continuous contract of service with the employer if he has been employed by that employer for a period of less than 2 years

• 15 days’ wages for every year of employment under a continuous contract of service with the employer if he has been employed by that employer for 2 years or more but less than 5 years

• 20 days’ wages for every year of employment under a continuous contract of service with the employer if he has been employed by that employer for 5 years or more, and pro-rata in respect of an incomplete year, calculated to the nearest month

For non-EA Employees, the entitlement to severance payments depends on the employment contract.

POST-TERMINATION RESTRAINTS

Non-competes

Void and unenforceable pursuant to Section 28 of the Contracts Act 1950, as the former employee is "restrained from exercising a lawful profession, trade, or business."

Customer non-solicits

Valid and enforceable only to the extent that there has been a breach of confidentiality, or misuse of confidential information or trade secrets.
Employee non-solicits

Valid and enforceable only to the extent that there has been a breach of confidentiality, or misuse of confidential information or trade secrets.

WAIVERS

Generally enforceable, but subject to legal review based on the scope and circumstances in which the waiver was given. A waiver by an employee of the employee’s right to bring legal action or a claim for unfair dismissal/termination is not enforceable.

REMEDIES

Discrimination

No specific remedies.

Unfair dismissal

Reinstatement or, more commonly, compensation in lieu of reinstatement. Potential exposure of the employer to pay up to 24 months' back wages and compensation in lieu of reinstatement calculated at one month's wages per year of service.

Failure to inform & consult

No specific remedies.

CRIMINAL SANCTIONS

None specific to employers.

KEY CONTACTS

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MEXICO

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. The official currency is the Mexican Peso (MXN). The official language is Spanish.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity cannot directly engage employees in Mexico without setting up a branch or subsidiary. Proper payroll registrations are required. Social security, tax and union contributions withholdings may apply, depending on the employee’s category and income.

PRE-HIRE CHECKS

Required

Immigration compliance.

Permissible

Under Mexican law, there are few restrictions on an employer’s right to request substantiating documents and confirm the information provided by the applicant regarding their education, health condition, finances, drug use, family situation and criminal background. Employers have broad flexibility regarding the questions that may be asked during the application process.

Criminal background checks are permissible; however, only the employees in question themselves can request such information from the corresponding authority. Credit checks are not common in Mexico as there is no specific procedure established by law for employers to obtain credit information. Reference and education checks are common and permissible with applicant consent.

IMMIGRATION

A foreign national requires an immigration document (ie, temporary visa) authorizing them to live and work in Mexico. Such visas are valid for 1 year and renewable for up to 4 additional periods, after which time the holder
may apply for a permanent visa. It is the employer that must file a visa application with the Mexican immigration authorities.

**HIRING OPTIONS**

**Employee**

Indefinite, fixed-term, training, part-time and seasonal or intermittent. Fixed-term agreements may only be executed under specific circumstances (e.g., temporary replacement of an employee on maternity leave).

**Independent contractor**

Independent contractors may be engaged. Specific rules (i.e., judicial criteria) must be followed in order to reduce misclassification exposure.

**Agency worker**

Agency workers are no longer permitted. A company may hire a specialized services provider only for activities that are different from the core business of the company receiving such services. The specialized service provider must be registered with the registry of specialized services provider maintained by the Ministry of Labor. Otherwise, the company receiving the services could be subject to monetary sanctions.

**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

A written employment agreement must be executed.

**Probationary periods**

Employees hired pursuant to an indefinite employment agreement or a fixed-term agreement of at least 180 days may be hired subject to a probationary period of up to 30 days, extendable by up to 180 days if the employee is hired as an executive, manager or director or fills an administrative position.

**Policies**

Depending on the number of employees, written training and productivity policies (i.e., policies addressing training and productivity or professional development plans) as well as health and safety policies are mandatory and must be reviewed annually. An internal work policy may be issued in order to cover the general rules to be followed within the company and expected conduct at the workplace.

**Third-party approval**

Labor board approval of the employment relationship is required if the employee is 15 to 18 years old, or if the employment agreement is executed under Mexican law, but the activities are performed abroad.

**LANGUAGE REQUIREMENTS**
No statutory requirements. However, Spanish is recommended as Mexican authorities require all employment documents to be in Spanish or translated into Spanish.

**MINIMUM EMPLOYMENT RIGHTS**

**Employees entitled to minimum employment rights**

All.

**Working hours**

Up to 48 hours a week for workday shifts, 42 hours a week for night shifts and 45 hours a week for mixed shifts. Employees must have at least 1 paid day off every 6 days. It is common business practice for employees to work 48 hours per week distributed among 5 days.

**Overtime**

An employee may not be required to work more than 3 hours greater than the number of hours in the statutory workday during a given shift, or more than 9 hours in a given week. An employee working overtime on a given day is entitled to double compensation for each hour of overtime. In the event the employee works more than 9 hours overtime in a given week, the employee is entitled to triple the applicable hourly wage for each hour of overtime.

**Wages**

Minimum wage is established by geographical areas and/or for specific professions or specific professional fields. There are currently two geographical areas for the purposes of determining minimum wage. The minimum wage in 2022 for 43 counties in the Northern Border is MXN260.34 per day. The general minimum wage for the rest of the country is MXN172.87 per day. Minimum wage is set up every year by the National Commission of Minimum Wages. Before the new administration took office in 2018, the minimum generally increased annually in accordance with the National Consumer Price Index (INPC).

**Vacation**

An employee who has worked for more than 1 year is entitled to at least 6 days of paid vacation. The number of mandatory vacation days increases by 2 working days for each following year until it reaches 12 vacation days. Thereafter, the vacation period increases by 2 days for every 5 years of service.

**Sick leave & pay**

If an employee cannot work due to illness or an accident, they must obtain a medical authorization from the Mexican Social Security Institute in order to receive pay for the days on which the employee could not attend work.

**Maternity/parental leave & pay**

Women have the right to 6 weeks of paid leave prior to the birth of a child and 6 weeks following the birth of a
child. Women may allocate up to 4 of the 6 weeks of the pre-birth leave to the post-birth leave period. If a child is born with disabilities or requires medical attention, the post-birth paid leave may be extended by up to 2 additional weeks.

In case of adoption, female employees are entitled to 6 weeks of paid leave following placement of the child.

A male employee is given 5 business days of paid paternity leave when his spouse gives birth or when he adopts a child.

**DISCRIMINATION**

Employers may not discriminate against employees or job candidates on the basis of age, ethnic origin, race, sex, citizenship, disabilities, health conditions, religion, opinions, sexual orientation, marital status or any other criteria.

**BENEFITS & PENSIONS**

The Social Security Law regulates employer, employee and government participation in certain federal social benefit programs through the Mexican Institute for Social Security (*Instituto Mexicano del Seguro Social* or IMSS). Registration of an employee with the IMSS relieves the employer from the following risks and obligations:

- Work-injury-related risks
- Health and maternity insurance

**DATA PRIVACY**

To process personal data, data controllers must provide a privacy notice to the affected employees prior to the collection and processing of such personal data. In the case of data transfers, the privacy notice must contain the name of the transferee or the person to whom the information is transferred. All transfers of personal data to domestic or foreign third parties must be pre-approved by the data subject (ie, the employee).

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

Employment transfers may be implemented via an employer substitution letter. Employment transfer through substitution of employer is only effective if the assets related to the business are also transferred. Transferred employees are entitled to receive at least the same benefits and perform their work subject to the same terms and conditions as before the transfer. The employer who has been substituted will be jointly responsible with the new employer for a period of 6 months.

**EMPLOYEE REPRESENTATION**

Trade unions are prevalent in certain sectors, such as the sugar, railway, automotive and mining industries as well as the public sector, especially the education and energy industries. A union may be formed by at least 20 employees in a certain workplace; however, employees who are affiliated with an existing union may request,
through that union, to sign a collective bargaining agreement with their employer, provided they represent at least 30 percent of the employees at the workplace.

There are no works councils or other employee representatives.

**TERMINATION**

**Grounds**

An employer may rescind an employment relationship without incurring any liability if any of the justified causes established by law are given, which are mostly based on misconduct. Technically, the employer cannot terminate employment without cause, except in specific cases established in the labor law. In practice, however, exposure in an unlawful termination lawsuit is mostly limited to statutory termination payments, so most terminations may be implemented either through employee resignations (with all statutory payouts, including severance), or through a mutual termination agreement (also with all statutory payouts, including severance).

**Employees subject to termination laws**

All employees.

**Restricted or prohibited terminations**

If the employment relationship is suspended (e.g., when an employee is on maternity leave).

**Third-party approval for termination/termination documents**

No third-party approval is required, but it is common for employees to sign a resignation letter or a waiver and release letter in front of the labor authorities.

**Mass layoff rules**

No mass layoff rules.

**Notice**

No notice period.

**Statutory right to pay in lieu of notice or garden leave**

Not applicable under Mexican law.

**Severance**

Integrated salary of 90 days (i.e., the last annual average of the employee’s income), plus 20 days’ integrated salary for each year of services rendered, a seniority premium equal to 12 days’ wages for each year of services rendered (subject to a limitation up to twice the minimum wage) and accrued benefits.

**POST-TERMINATION RESTRAINTS**
Non-competes

Post-termination non-compete clauses or agreements are not enforceable. However, such provisions are typically included in employment agreements because they can have a deterrent effect and may create a sense of moral obligation on the part of an employee.

Customer non-solicits

Post-termination customer non-solicit clauses or agreements are not enforceable. However, such provisions are typically included in employment agreements because they can have a deterrent effect and may create a sense of moral obligation on the part of an employee.

Employee non-solicits

Post-termination employee non-solicit clauses or agreements are not enforceable. However, such provisions are typically included in employment agreements because they can have a deterrent effect and may create a sense of moral obligation on the part of an employee.

WAIVERS

Enforceable; however, employees cannot waive their right to receive mandatory benefits or rights.

REMEDIES

Discrimination

No specific sanctions are in place.

Unfair dismissal

The employer must pay the severance payment plus the claimant’s unpaid wages from the day they were unfairly dismissed until 1 year thereafter, plus a monthly increase of 2 percent of the claimant’s total amount awarded as well as any proven unpaid benefit (eg, overtime, bonuses and commissions), plus 20 days’ integrated salary for each year of service rendered (this amount is only applicable in case the employee demands their reinstatement and the employer rejects it).

Failure to inform & consult

Not applicable under Mexican law.

CRIMINAL SANCTIONS

Employees may be subject to criminal sanctions if they do not honor their non-disclosure agreement.

Employers may be subject to criminal sanctions if they pay to their employees less than the minimum wage or employ children under 15 years old.
KEY CONTACTS

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MOROCCO

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law, inspired by French law. The official currency is the Moroccan Dirham (MAD). The official language is Arabic, but French is common for business purposes.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity cannot hire employees in Morocco unless it has a branch or a subsidiary registered in Morocco. Withholding for pay-as-you-earn (e.g., for a social security fund – up to approximately 25-percent employer contribution and up to approximately 7-percent employee contribution) and income tax (up to 38 percent) to be done through payroll.

PRE-HIRE CHECKS

Required

Identity and personal information checks. Immigration compliance. For certain limited occupations (e.g., solicitors and chartered accountants), a criminal records check is required. Medical examination to confirm the employee is fit for the job.

Permissible

Education checks. Prior employment checks.

IMMIGRATION
National preference scheme. Work permits required for all foreigners with very limited exceptions.

From June 1, 2017, applications for foreigners’ employment contract visas are accepted if introduced via the TAECHIR platform. The process for obtaining a work permit may be completed within a maximum of 10 days instead of 3 to 6 months, as was previously the case.

Although the procedure is simplified, the certificate issued by the National Agency for Promotion of Employment and Competence (ANAPEC), which is evidence that the position of the foreign employee cannot be occupied by a national employee, is still required.

- The employer must demonstrate that there is no skill locally available for the position by publishing job announcements in local newspapers.
- The employer must obtain authorization from the National Agency for the Promotion of Employment.
- The employer must obtain authorization from the Ministry of Labor.

To employ foreign workers, a prescribed process must be followed, and the individual workers must meet set criteria in terms of, for example, skills and language.

Some foreign workers are not required to obtain the ANAPEC certificate either because of their particular immigration status (e.g., spouse of Moroccan nationality) or position (e.g., legal representative), or because of the status of their employer (Casablanca Finance City).

Since April 19, 2019, a foreign employee’s contract can be either fixed-term or indefinite-term. A foreign employee who is hired under an indefinite-term contract benefits from all protections granted to national employees, notably in terms of compensation if the contract is wrongfully terminated by the employer.

HIRING OPTIONS

Employee

Indefinite, fixed-term, full-time or part-time (rarely used).

Independent contractor

Independent contractors may be hired directly by the company. The hiring of an independent contractor may be subject to requalification as an employee. Contract drafting must be accurate. Self-employed independent contractors are paid gross and are responsible for their own taxation.

Agency worker

Engagement of agency workers is strictly regulated. Recourse to agency workers should be exceptional. Recourse to agency workers is permitted:

- To replace an employee with another in the event of absence or in the event of suspension of the
employment contract, provided that such suspension is not caused by a strike

- In case of a temporary increase in the activity of the company
- For the performance of seasonal work or
- For the performance of work for which it is customary not to conclude an indefinite-term employment contract due to the nature of the work.

Agency workers remain employees of the agency.

**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

Written contracts are not mandatory, except in certain situations (eg, agency workers).

**Probationary periods**

Depending on the position of the employee and the type of contract (indefinite or fixed), the probationary period ranges from 1 day to 3 months.

**Policies**

Internal regulations that provide general mandatory provisions applicable within the company are mandatory for all companies with more than 10 employees.

**Third-party approval**

A labor inspector’s approval of internal regulations is required.

**LANGUAGE REQUIREMENTS**

No statutory language requirement in Morocco, but the official language is Arabic. French is also acceptable as a language for an employment agreement, provided that the employee speaks French. English is rarely used but may be tolerated in certain circumstances.

**MINIMUM EMPLOYMENT RIGHTS**

**Employees entitled to minimum employment rights**

All.

**Working hours**

There is a 44-hour limit on working time per week. There are additional rules regarding rest breaks, night work and rest periods between shifts.
Overtime

Mandatorily paid at the rate of 25 percent if the work is performed between 6am and 9pm, and 50 percent if the work is performed between 9pm and 6am.

Payment of double wage if the employee works on a public holiday.

Wages

Minimum wage: MAD2,828.71 (approximately EUR250) per month; MAD14.81 per hour.

Vacation

After 6 months of service in the company, 1.5 days' vacation per month of service. An employee who has worked 12 months in the company is entitled to 18 days' vacation.

Sick leave & pay

Sick leave is not paid; social security pays 2/3 of the salary starting from the 4th day of absence up to 185 days in each 365-day period.

Maternity/parental leave & pay

Maternity leave of 14 weeks. Social security pays 100 percent of the employee's salary. Paternity leave of 3 days. The employer pays 100 percent of salary.

DISCRIMINATION

Discrimination based on race, skin color, gender, religion, political opinions, social origin or union freedom is forbidden by article 9 of the Labor Code.

Discrimination between men and women regarding wages is specifically prohibited by article 346 of the Labor Code.

BENEFITS & PENSIONS

It is mandatory for employees to enroll in the social security fund Caisse Nationale de Sécurité Sociale, which provides health insurance and pensions. The employee's contribution is approximately 7 percent, and the employer's contribution is approximately 25 percent.

DATA PRIVACY

Employees must be notified of data processing in accordance with law No 09-08 on data protection. Employees' consent to the processing of their data is required. Employees should be given the right to have access to and modify/amend their personal data.
Employers must declare data processing to the National Control Commission for the Protection of Personal Data (Commission Nationale de protection des Données Personnelles).

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

Automatic transfer pursuant to article 19 of the Labor Code in a business transfer.

Information must be sent to the employee’s representatives, if any exist in the company, but no authorization or consent is required.

**EMPLOYEE REPRESENTATION**

Trade unions are active in sectors like the automotive, steel and manufacturing industries.

Companies with at least 10 permanent employees must elect employees’ delegates. Non-compliance with the provision of the Moroccan Labor Code regarding election of employees’ delegates may lead to a fine of up to MAD30,000.

Companies with more than 50 permanent employees must set up a:

- Work committee and
- Health and safety committee.

Non-compliance with this provision of the Moroccan Labor Code may lead to a fine of up to MAD25,000. Collective bargaining agreements are uncommon.

**TERMINATION**

**Grounds**

Termination is permitted for serious misconduct, 4 non-serious misconducts in a single year or economic reasons. Termination due to poor performance is rare in Morocco and is subject to the following strict conditions:

- Performance objectives must be agreed upon between the employer and the employee in writing
- Objectives must not be excessive and
- The employer must prove that the employee was given all the means to achieve the objectives.

Employers must summon employees for a preliminary hearing before making a dismissal decision. The purpose of the hearing is to allow the employees to defend themselves.

Economic termination involves a different, long and cumbersome process.

At least 1 month before starting an economic dismissal process, the employer must inform the employees’
representatives, or the work council, and the union’s representatives, if any. The employer must also conduct discussions and negotiations with them in order to minimize the impacts of the contemplated dismissals. Meeting minutes must be drafted and signed by the employer and the employees participating in the negotiations, and a copy of these minutes must be sent to the labor inspector.

A request for authorization must be sent by the employer to the governor. The governor must inform the company of their decision to grant or not grant the authorization no later than 2 months after the receipt of the request.

The request for authorization must explain the financial difficulties faced by the employer or the technological or structural reasons and be documented by evidence of said difficulties or technological or structural reasons.

**Employees subject to termination laws**

All employees are protected against unfair dismissal except during the probation period.

**Restricted or prohibited terminations**

Termination of employment is prohibited during maternity leave.

Termination for discriminatory reasons is forbidden.

**Third-party approval for termination/termination documents**

Not required.

**Mass layoff rules**

Consultation with employees’ representatives is required in a mass layoff if such representatives exist in the company. The law is not specific about what constitutes a mass layoff; in theory, a mass layoff consists of more than 1 employee, but in practice, more than 10.

Subject to an authorization from the governor of the region, which is rarely granted in practice.

**Notice**

Varies between 8 days and 3 months, depending on the seniority and the position of the employee; notice is not required in cases of serious misconduct.

**Statutory right to pay in lieu of notice or garden leave**

Statutory right to pay in lieu of notice. It is permissible to put employees on garden leave during the notice period if their salary is paid.

**Severance**

In case of termination of a fixed-term employment agreement without misconduct of the employee, the severance pay equals the wages the employees would have received if the employee had stayed in the company until the end of the employment contract.
In case of termination of an indefinite-term employment agreement without serious misconduct of the employee, the severance pay depends on the seniority of the employee; the amount may vary between 2 and 36 months of salary. In some cases, the severance pay may be even higher.

**POST-TERMINATION RESTRAINTS**

**Non-competes**

Permitted if limited in time and space. Usually 1 year maximum and 200 km maximum surrounding the place of work.

**Customer non-solicits**

Permitted if limited in time. Usually 1 year maximum.

**Employee non-solicits**

Permitted if limited in time. Usually 1 year maximum.

**WAIVERS**

Not admitted for all mandatory statutory provisions contained in the Labor Code and related decrees. When terminating an employee’s employment, it is not common to enter into a settlement agreement or waiver. However, when the employment contract is terminated by mutual agreement between the employer and the employee, such termination is usually finalized in front of a labor inspector who drafts an agreement between the parties.

Once this agreement is signed, the employee automatically waives their rights to claim compensation.

**REMEDIES**

**Discrimination**

Damages based on the claimant’s financial losses and moral damage.

**Unfair dismissal**

Indemnification for dismissal is calculated on the basis of the employee’s seniority:

- 96 hours per year of work for the first 5 years of seniority
- 144 hours per year of work for each year between 6 and 10 years of seniority
- 196 hours per year of work for each year between 11 and 15 years of seniority
- 240 hours per year of work for each year after 20 years of seniority
Damages equal to 1.5 months per year of seniority.

Pay in lieu of notice, equal to the remuneration the employee would have received if they had remained at their position during the notice period, if notice was not given.

Note: (1), (2) and (3) are cumulative.

Failure to inform & consult

In case of automatic transfer of employees in the context of an acquisition, if the employees’ representatives are not informed, employees may refuse to be transferred and may be considered as having been unfairly dismissed. See consequences of unfair dismissal.

CRIMINAL SANCTIONS

Ranges from fines (up to EUR30,000) to the closure of the company.

KEY CONTACTS

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MOZAMBIQUE

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. The official currency is the Mozambican Metical (MZM). The official language is Portuguese.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity cannot directly engage employees in Mozambique. It is necessary to establish a legal presence by means of incorporation of a company (ie, subsidiary) or registration of a foreign commercial representation (ie, branch).

Labor and tax obligations must be complied with by all registered entities. Employers (and employees) must register for social security and pay monthly contributions of 7 percent, of which 3 percent is deducted from the employee’s salary and 4 percent is borne by the employer. Foreign employees must be registered for social security by the employer; however, if these employees prove to the employer and social security that they are covered by the social security system of another country, they may be exempt from this contribution in Mozambique. Personal income tax is applicable to all employees and is withheld through payroll and paid over to the revenue authorities. The rates are established on a steeply graduated basis depending on the amount of the income (ie, salary), with a maximum effective rate of 32 percent.

PRE-HIRE CHECKS

Required

Immigration compliance for foreign employees. Foreign employees must have a valid work permit and a residence permit to work in Mozambique. In general, pre-hire checks are not mandatory but in some areas of activity (eg, mining, oil and gas) prior medical examinations are required.

Permissible

Reference and education checks are permissible, and candidates may be requested to provide a certificate of criminal records.
IMMIGRATION

In order to work in Mozambique, all foreign employees are required to have a work and residence permit. Foreign individuals who perform short assignments for periods not longer than 90 days in the same year may apply for a short-term work permit. Hiring of foreign employees must follow the procedures and mechanisms provided by law. The procedures for hiring of foreign employees depend on the type of work permit sought. There are basically 2 forms by which a foreigner may work in Mozambique: communication and authorization.

Communication may take the form of:

- A work permit within the established quotas: 10 percent for a company with up to 10 employees (small company); 8 percent for a company with more than 10 and up to 100 employees (mid-size company) and 5 percent for a company with more than 100 employees (large company). Agreements with the Government of the Republic of Mozambique may provide for special quotas different from the standard one described in the Labor Law and cited above.

- A short-term work permit for occasional short-term assignments. This work permit is granted for a period of 90 days in a calendar year, which may be taken in consecutive or interspersed days according to the employer's needs. Previously, the short-term work permit was granted for a period of 30 days, which could be extended for 2 further periods of up to 30 days; now, it may be applied for 90 days immediately or for a number of blocks of different length provided that the 90-day limit is not exceeded. Short-term work permits do not affect the quota.

Authorization is the proper method to be used when the quota has been exhausted and is subject to the discretion of the Minister of Labor.

The National Immigration Service has administratively suspended the issuance of residence permits for work visa holders and, in turn, has started to extend the work visa for 1 year, the same period that the residence permit allows. The DIRE is still applicable for those work visa holders hired before this new instruction from October 2017.

HIRING OPTIONS

Employee

Indefinite, fixed-term (certain or uncertain). The fixed term may be for a certain period if it is known in advance when the task will start and end. An uncertain fixed-term is for a fixed-term which cannot be determined at the outset – for example, where an employee is employed to replace another employee who is injured. When the event that justified the signature of the fixed-term contract for the certain period ends, the contract terminates by expiry. Fixed-term employment contracts for a certain period may only be concluded for a maximum period of 2 years and may be renewed twice. Employment contracts that exceed the renewal periods are considered to be concluded as indefinite employment contracts. Foreign employees may only be hired on fixed-term employment contracts, which cannot be converted into permanent contracts.

Independent contractor

An independent contractor may be engaged through a service provision contract with a company or with an
individual. Service provision contracts with individuals must contain clauses that clearly distinguish them from employment contracts. An individual foreign contractor needs a work and residence permit to provide services in Mozambique and will become an employee of their client (ie, corporate person) unless they form their own company to apply for their work permit and resident permit.

Agency worker

A specific regime applies to private employment agencies which provide services for the recruitment of employees with the purpose of temporary transfer to a third-party user, locally or abroad, by means of a temporary employment contract or user agreement. These agencies cannot hire foreigners to transfer them to third parties – they may only do so for nationals. They may only hire foreigners to work for them and not their clients.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

Employer and employee are required to conclude written employment contracts, and the Labor Law establishes mandatory clauses that must be included in the contract. Individual employment contracts must be in writing, be dated and signed by both parties, and must contain the following clauses:

- Identification of the employer and the employee
- Professional category, tasks or activities agreed upon
- Workplace
- Duration of the contract and conditions for its renewal
- Amount, form and frequency of remuneration
- Date of commencement of execution of the employment contract
- The term and the justification for the form of contract, in the case of fixed-term contracts, and
- Date of signature of the contract and, in the case of a fixed-term contract for a certain period, its termination date.

A copy of a signed employment contract between the parties must be filed in the individual employee's file, together with other documents upon hiring.

Probationary periods

Permissible. Indefinite employment contracts are subject to a maximum of:

- 90 days for all employees and
- 180 days for medium- and high-level professional employees and employees in positions of management and direction
For fixed-term contracts, probation shall not exceed:

- 90 days for contracts for periods longer than 1 year
- 30 days for contracts for periods between 6 months and 1 year
- 15 days for contracts up to 6 months and
- 15 days for uncertain period contracts which are expected to last for 90 days or more.

Policies

Employers with more than 10 employees (i.e., medium- and large-sized companies) are required to have an internal regulation which contains rules on the organization and discipline of work, employee social support frameworks, the use of the company's premises and equipment, and those relating to cultural, sporting and recreational activities.

Third-party approval

Internal regulation must be preceded by consultation with the employer's trade union committee or, in the absence thereof, with the relevant union as well as approval of the relevant labor department.

LANGUAGE REQUIREMENTS

Although not required by law, all employment contracts should be in Portuguese, especially because of labor inspections. It is common to use bilingual employment contracts (e.g., Portuguese and English).

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All employees.

Working hours

Normal working hours shall not exceed 48 hours per week and 8 hours per day. 6-day work weeks are common in some sectors such as oil and gas. It is permissible to extend the daily working hours to 9 hours per day, provided that the employee is given an extra half day of rest per week aside from the weekly day of rest.

Exceptionally, instruments of collective labor regulation may increase the normal working hours by up to a maximum of 4 hours, provided that weekly working time does not exceed 56 hours.

Overtime

Overtime is work performed over the normal daily working hours (i.e., over 8 hours per day). Overtime may only be performed when:
Employers are faced with workload increases that do not justify the recruitment of employees under fixed-term contracts or indeterminate period contracts or

There are other compelling reasons.

Employees may perform up to 96 hours of overtime per quarter, but no employee shall perform more than 8 hours of overtime per week nor exceed 200 hours per year. It is mandatory to record overtime in a specific book. Overtime performed until 8 pm shall be paid at the normal wage rate plus 50% (150% in total), and overtime performed between 8 pm and the start of the normal working hours of the following day shall be paid at the normal wage rate plus 100% (200% in total).

Wages

The minimum salary is approved annually by a tripartite committee involving representatives of both employers and employees and the Ministry of Labor (Comissão Consultiva de Trabalho or CTT). The minimum salary is approved by sectors, and there are 8 sectors of activity:

<table>
<thead>
<tr>
<th>Sector of activity</th>
<th>Minimum salary 2019 (MZM)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture, livestock, hunting and agro forestry (Sector 1)</td>
<td>4,390</td>
</tr>
<tr>
<td>Industrial and semi-industrial fishing (Sector 2)</td>
<td>5,370</td>
</tr>
<tr>
<td>Kapenta fishing (Sector 2)</td>
<td>4,266.68</td>
</tr>
<tr>
<td>Mining extraction (Sector 3)</td>
<td>9,254.60</td>
</tr>
<tr>
<td>Mining - quarrying and sand mining (sand extraction) (Sector 3)</td>
<td>6,379</td>
</tr>
<tr>
<td>Salt mine (salinas) (Sector 3)</td>
<td>5,318.06</td>
</tr>
<tr>
<td>Manufacturing (Sector 4)</td>
<td>7,000</td>
</tr>
<tr>
<td>Bakery (Sector 4)</td>
<td>5,000</td>
</tr>
<tr>
<td>Sector</td>
<td>Revised Minimum Salary Rates</td>
</tr>
<tr>
<td>--------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td>Production and distribution of electricity, gas and water (Sector 5)</td>
<td>8,300</td>
</tr>
<tr>
<td>Small operators (Sector 5)</td>
<td>6,760</td>
</tr>
<tr>
<td>Construction (Sector 6)</td>
<td>6,136.70</td>
</tr>
<tr>
<td>Non-financial services and activity (Sector 7)</td>
<td>6,850</td>
</tr>
<tr>
<td>Subsector of the hotel industry</td>
<td>6,478</td>
</tr>
<tr>
<td>Financial activity and services (Sector 8)</td>
<td>12,760</td>
</tr>
<tr>
<td>Micro-finance, micro-insurance and other ancillary activities (Sector 8)</td>
<td>11,336</td>
</tr>
</tbody>
</table>

Revised minimum salary rates are announced around April each year but backdated to January.

**Vacation**

Employees are entitled to:

- 1 day of leave for every month in the 1st year of service
- 2 days of leave per month in the 2nd year of service and
- 30 days of leave from the 3rd year onwards.

Fixed-term employment contracts with a duration of more than 3 months but less than 1 year must provide for leave of 1 day for every month of service.

**Sick leave & pay**

The Labor Law does not provide for sick leave. Sick leave is considered justified absence provided that a valid medical certificate is provided by the employee. The employer is not required to pay for these days. The employee must claim sick leave payments from the National Social Security Institute. It is permissible to include periods of paid sick leave in internal policies. If the employee exhausts their paid sick leave by law, they are allowed additional
absences due to sickness, but those will not be paid. If the employee is often absent due to illness, the employer may refer them to the Medical Board to assess their capacity to work. Absences due to illness must be justified by appropriate medical certificates.

Maternity/parental leave & pay

Female employees are entitled to maternity leave of 60 consecutive days, which may commence 20 days prior to the expected delivery date and may be taken consecutively with annual leave. The employer is not required to pay the employee during the period of maternity leave as social security pays for the 60-day leave period at 100 percent of salary based on the salary payable in the last 6 months. Nevertheless, the employer may decide to pay for this period. The father is entitled to 1 day of paid paternity leave for each 2 years of service.

DISCRIMINATION

All employees are guaranteed equal rights at work, regardless of their ethnic origin, language, race, gender, marital status, age (within the limits set by law), social condition, religious and political ideas and membership or non-membership in a union.

Measures that benefit certain disadvantaged groups – namely, measures based on gender, impaired work capacity, disability or chronic disease – taken for the purpose of guaranteeing the exercise of the rights set forth in this law on an equal footing, and to correct a persistent factual situation of inequality in social life, shall not be considered discriminatory.

Female employees shall be respected and any act performed in violation of their dignity shall be punished by law. Employees who commit acts which violate the dignity of a female employee shall be subject to disciplinary proceedings. Employers are forbidden from dismissing, imposing sanctions or otherwise causing prejudice to a female employee on the basis of allegations of discrimination or exclusion.

Harassment, including sexual harassment, whether committed in or outside of the workplace, which interferes with the security of employment or with the professional progress of the employee, constitutes a disciplinary offense.

Employers shall promote measures that allow employees with disabilities to enjoy the same rights and have the same responsibilities as other employees. Instruments of collective labor regulation may establish special measures to protect disabled employees. There are no specific regulations on this matter, but, as a matter of practice, employers may, for instance, refurbish the workplace entrance to allow easy access for employees in wheelchairs.

Employees with HIV-AIDS may not be discriminated against.

BENEFITS & PENSIONS

Employees must be enrolled with the social security system, which ensures minimum subsistence and material security of employees in the event of illness or incapacity, old age or the survival of their family members in the case of their death. Complementary pension funds have specific regimes and are permissible.

DATA PRIVACY
The Constitution of the Republic of Mozambique, as well as the recently enacted Electronic Transactions Law (The Law No. 3/2017, of January 9), prohibits access to data bases or to computerized archives, files and records for obtaining information on the personal data of third parties, as well as the transfer of personal data from one computerized file to another that belongs to a distinct service or institution, except in cases provided for by law or by judicial decision.

The Labor Law establishes that employers may not require an employee to supply information regarding their private life, except when particular requirements inherent to the nature of the professional activity so require. In addition, employees’ personal data obtained by an employer is subject to a duty of confidentiality, and information where the release of which would violate that employee’s privacy rights may not be given to a third party without the consent of the employee, unless it is required by law.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

In the event of a transfer of a business, the employees are automatically transferred to the new employer unless the employees decide to terminate the employment contract. The rights and obligations under existing employment contracts and collective labor regulation instruments, including those arising from an employee’s length of service, pass to the new employer.

Communications must be made to the Ministry of Labor and to the trade union, if any, informing them of the transfer, date, reasons, consequences thereof and intention to respect the rights acquired by the employees in the previous labor relationship. The law does not set a minimum time period, but, in practice, it is appropriate for communications to be made 30 days in advance.

**EMPLOYEE REPRESENTATION**

Trade unions are prevalent in all sectors of activity in Mozambique. Employees have the right to form and belong to organizations of their choice for the defense and promotion of their socio-professional and business rights and interests. No employee may be compelled to be a member of a union. Employers are not allowed to fund a union’s activity. Unions may engage in collective and company-level agreements. There is a central union (ie, industrywide union), but, at the company level, there may be a union committee formed by employees. This union, for example, offers its opinion on disciplinary proceedings and participates in salary negotiations. In the absence of a union committee, the employer must go to the industrywide union. This is to ensure the rights of the employees are protected regardless of the existence of a union committee at the company level. This is essentially the equivalent of a works council.

**TERMINATION**

**Grounds**

The formalities for termination of an employment contract are provided by the Labor Law and are mandatory. There is no summary dismissal without notice. Employment contracts may terminate by expiry, agreement, denunciation (ie, cancellation) by either party or rescission by either of the contracting parties based on just cause.
(eg, retrenchment or disciplinary process). Cancellation of the contract may be based on just cause or for convenience. This type of termination may take the form of resignation provided that the employee meets the notice requirements as applicable.

Performance issues, depending on the particular situation, may be dealt with as misconduct (ie, lack of compliance with work instructions) or as manifest ineptitude discovered after the probationary period – a of unilateral termination of the contract by the employer with just cause.

Employees subject to termination laws

All employees.

Restricted or prohibited terminations

There are no statutory prohibitions.

Third-party approval for termination/termination documents

No, apart from the consultation or notification below in case of a mass dismissal.

Mass layoff rules

In respect of collective dismissal (ie, more than 10 employees) there is a consultation process with the trade union where the union may be required to be involved in the termination process. This process shall not last longer than 30 days. Notification to the Ministry of Labor is additionally required. The employer shall inform the trade union, the affected employees and Ministry of Labor of the collective dismissal before the negotiation process begins – no specific period is indicated in the law. The negotiation process shall not take longer than 30 days. In practice, the 30-day period begins when employees and other relevant stakeholders in the process are notified of the collective dismissal and negotiation process, and the collective dismissal occurs before or upon the end of this period.

Notice

In the event of termination during the probationary period, a minimum of 7 days’ advance notice, in writing, is required. In the event of termination with just cause after the probationary period, the employer must give 30 days’ prior notice. In case of termination by the employee, the employee is required to give prior notice of 15 days where the period of work is more than 6 months but does not exceed 3 years, and 30 days’ prior notice where the period of work is more than 3 years. Employees with fixed-term employment contracts must give prior notice of 30 days.

Statutory right to pay in lieu of notice or garden leave

Employees are entitled to receive salary during the notice period. Garden leave is common as notice cannot be paid in lieu.

Severance

In respect of termination of the contract on the initiative of the employer with just cause and with prior notice, the employee is entitled to receive severance. In respect of termination by agreement, compensation is normally agreed between the parties. In respect of termination by dismissal due to a disciplinary process, expiry or during
the probationary period, the employee is not entitled to severance.

In the event of contracts for indefinite duration (ie, permanent contracts), the employee is entitled to severance which will be calculated according to the salary received by the employee, as per the following table:

<table>
<thead>
<tr>
<th>Base wage</th>
<th>Severance payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>From 1 to 7 minimum wages (MWs)</td>
<td>30 days for each year of service</td>
</tr>
<tr>
<td>From 8 to 10 MWs</td>
<td>15 days for each year of service</td>
</tr>
<tr>
<td>From 11 to 16 MWs</td>
<td>10 days for each year of service</td>
</tr>
<tr>
<td>More than 16 MWs</td>
<td>3 days for each year of service</td>
</tr>
</tbody>
</table>

On the date of termination of an employment contract which is a fixed-term contract, the employer shall pay the affected employee severance equivalent to the wages that the employee would have earned between the date of termination and the contractual expiry date. Where more favorable severance criteria have been agreed upon between employer and employee, such favorable criteria shall apply as it benefits the employee. The requirements of the Labor Law in this case are regarded as minimum severance requirements.

Employees hired while the former labor law was in force (ie, before November 1, 2007) and whose basic salary, including the length of service bonus, corresponds to an amount between 1 and 7 minimum national wages may also be entitled for a severance of 90 days for each 2 years of service, or a fraction thereof.

If the termination of the employment contract on the initiative of the employer is deemed to be unlawful by a Labor Court, the employee is entitled to be re-instated and receive an amount equal to the remuneration payable between the date of termination and the date of effective re-instatement, up to a maximum of 6 months.

If re-instatement is not possible, the employer is liable for severance of 45 days per year of service minus any severance already paid, if any. The period between the unlawful termination and the verdict of the Labor Court shall count as length of service of up to 6 months for severance calculation purposes.

## POST-TERMINATION RESTRAINTS

It is permissible to have restrictive covenants in the employment contract related to confidentiality, non-compete and non-solicitation after termination of the contract. However, there is no precedent where these kinds of clauses have been discussed in a court in Mozambique. In principle, these kinds of clauses would not be reviewed.
by a labor court, but rather by a civil court.

Non-competes

Permissible although not commonly enforced.

Customer non-solicits

Permissible although not commonly enforced.

Employee non-solicits

Permissible, but not common.

**WAIVERS**

No precedents, but waivers and releases are common, particularly in cases of termination by agreement.

**REMEDIES**

Discrimination

No precedents. There are penalties, but these penalties would normally be applied by the labor inspectorate in case of a labor audit. As a general rule, fines vary between 5 and 10 times the minimum wage and, in some occasions, may be applied per employee.

Unfair dismissal

If the court declares that dismissal was unfair, the employee shall be re-instated and shall be entitled to receive an amount equal to the remuneration payable between the date of the termination and the date of effective re-instatement, subject to a maximum of 6 months. Any amounts received by the employee as severance at the time of dismissal shall be deducted. If re-instatement is not possible, the employer is required to pay severance corresponding to 45 days per year of service.

Failure to inform & consult

May result in the disciplinary process or termination of contract being deemed unlawful for lack of compliance with mandatory rules.

**CRIMINAL SANCTIONS**

Possible, but separate from labor process.
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MYANMAR

LEGAL SYSTEM, CURRENCY, LANGUAGE

New civil laws co-exist with the old British colonial laws and regulations, and the laws and regulations issued by the various military governments over the last fifty years. Further, there has been a liberal application over the last few decades of "policies and practices," which are not detailed in any laws or regulations and are often unpublished.

Myanmar/Burmese Kyat (MMK).

The official language is Burmese. English has become increasingly popular in the business community. In practice, dual language (Burmese/English) contracts will be required to ensure that all parties understand the contents of the employment contract.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign investor investing in Myanmar may either incorporate a subsidiary or register an overseas corporation of a company incorporated outside Myanmar. A Myanmar subsidiary may be wholly foreign owned or may be a joint venture with a Myanmar company. Foreign employers usually cannot directly engage employees in Myanmar without local corporate presence.

Employers must pay social insurance at the rate of 3 percent, of which 2 percent is to be paid into the Health and Social Care fund and 1 percent into the Employment Injury Benefit fund. Personal income tax must be paid by employees on their assessable income. The employer is responsible for calculating each employee’s personal income tax liability, withholding it from the employee’s pay check and remitting this amount to the tax authorities on the employee’s behalf.

PRE-HIRE CHECKS

Required

None.

Permissible
Employers may request their employees to provide information relating to the execution of an employment contract, such as full name, age, gender, residence address, educational level, occupational skills, and health conditions. Employers may also request a recommendation letter from a local administration office or a previous employer and may request a criminal background check from the relevant township police station when an employee submits an application for employment.

**IMMIGRATION**

All foreigners who work in Myanmar must obtain a business visa and may apply for a multiple-entry visa and a long-term stay permit or work permit. Pursuant to the Myanmar Investment Rules, an investor should obtain approval from the Myanmar Investment Commission (MIC) when appointing a foreigner as a senior manager, technical expert or consultant. An MIC company must submit a work permit application in advance of the appointment of a foreign expert, or within 7 days of the foreign expert’s arrival in Myanmar.

Foreign employees of companies without an MIC permit/endorsement are required to obtain a business visa. A valid business visa holder intending to work in Myanmar for an extended duration must apply for a longer stay and multiple-entry visa, and may apply for a stay permit. A Foreign Registration Certificate should be obtained by foreign nationals who wish to reside and work in Myanmar continuously for more than 90 days.

**HIRING OPTIONS**

**Employee**

The term "worker" is the general term used for "employees" in Myanmar, although the 2 terms may have slightly different meanings depending on the specific legislation. Employees may be employed on a full-time, part-time or casual basis. Certain laws such as the Workmen Compensation Act 1923 contain specific carve-outs for employees engaged on a "casual" basis. While the law does not provide specific differentiations with regard to the rights and obligations associated with full-time, part-time, fixed-term and indefinite forms of employment, entitlements upon termination of various types of contracts do differ.

Employers must maintain registers and records of employees, ie, the work performed by such employees, the wages paid to them, the deductions made from their wages, the receipts given by them, and any other particulars. Government-appointed inspectors may visit the facilities of the enterprise and audit the status of such registers and records.

**Independent contractor**

The labor legislation does not specifically regulate independent contractors. Independent contractors can be hired directly by the company via a service agreement or an independent contractor agreement.

**Agency worker**

These would likely fall into the category of contractors which are permissible but not specifically regulated by Myanmar Law.
EMPLOYMENT CONTRACTS & POLICIES

An employer must enter into a written employment contract with an employee within 30 days of employment. Generally, the employer must use the standard employment contract issued by the Government.

An employment contract must include the following information:

- Type of employment
- Probation period
- Wages/salary
- Location of the employment
- Term of contract
- Working hours
- Day off/public holidays and leave
- Working overtime
- Meals during working hours
- Accommodation and uniform
- Medical treatment
- Arrangement for transportation and travelling
- Regulations to be followed by the employees
- Training courses
- Resignation and dismissal
- Termination
- Responsibilities of the employer
- Responsibilities of employees
- Terminating and making new employment contract with mutual consent between the parties
- Dispute resolution
- Amending and supplementing terms and conditions of contract
Obligations of the employer and employee

Probationary periods

The probationary period of a standard employment contract is usually 3 months, though this term is not required by legislation. Wages of not less than 75 percent of the basic salary for the work performed during the probationary period must be paid.

Policies

Per the standard employment contract, employers must set out minor and major offences in an appendix to the employment contract for an employee’s information. Employers are also recommended to adopt internal regulations which accord with the law, though the law provides no specific guidance on preparation of internal regulations. Generally, internal work rules and regulations mentioned in the employment contract will need to be submitted to the Township Labor Office (TLO) for approval.

Third-party approval

The employer must send a copy of the employment agreement to the TLO where the company is located for registration and must obtain the approval of the TLO. Because the employment agreement must be entered into within 30 days of the employment commencement, the TLO approval should be factored into this timeframe, eg, by obtaining the TLO’s pre-approval of the contract prior to the parties’ execution. Companies with fewer than 5 employees do not need to submit employment contracts for registration, but should still use the standard template.

LANGUAGE REQUIREMENTS

Although not specified, an employment contract needs to be in a language understood by both parties, so dual language is advisable (English and Burmese).

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All employees, whether full-time, part-time or on a “casual” basis.

Working hours

The maximum number of working hours is 8 hours per day and 48 hours per week (44 in factories).

Overtime

Hours worked exceeding 8 hours per day are considered overtime work. Overtime with the employee’s consent is permissible, but is restricted to no more than 12 hours per week. In the event of a special occasion, overtime can be a maximum of 16 hours in a week. Employees should not work or be allowed to work after midnight.
For factories, overtime of more than 16 hours in any week is prohibited, and no more than 12 hours per week is allowed in factories where a continuous process is carried out. Factory managers must obtain the approval of the Factories and General Labor Laws Inspection Department for proposed overtime work and payment.

**Wages**

Wages must be paid at the end of every month in factories and establishments where fewer than 100 people are employed, and within 5 days after the end of the month in all other cases. Wages following termination of employment must be paid within 2 days following the date of termination. All payments of wages must be made on a working day.

All wage payments shall be paid in Kyat or any foreign currency recognized by the Central Bank of Myanmar. Payment may be made either by cash or check, or transferred into the employee’s bank account, if the employer and employee both agree. Overtime payment must be paid at twice the rate of ordinary wages.

The Minimum Wages Law 2013 stipulates that an employee's wage must not be lower than the minimum wage provided by the government.

In March 2018, the National Minimum Wage Committee set a new minimum wage of MMK 4,800 per day (approximately US$3.10 per day). This wage does not apply to small businesses with fewer than 10 workers, and family businesses.

**Vacation**

Every employee who has completed a period of 12 months of continuous service must be granted annual leave of 10 days remunerated with average wages. From the commencement of employment, employees also have an annual entitlement to 6 days of paid casual leave. The casual leave does not carry over if not taken in 1 year. Employees can take casual leave of up to 3 days at a time, except that more days are allowed for religious or social activities. Casual leave is not allowed to be combined with any other types of leave.

**Sick leave & pay**

Employees with at least 6 months’ continuous service are eligible for 30 days’ medical leave per year with full pay, provided a medical certificate is given to the employer upon the employee’s return to work. If not in service for at least 6 months, an employee is entitled to 30 days’ sick leave without pay.

**Maternity/parental leave & pay**

Maternity leave shall be allowed for 6 weeks before confinement and 8 weeks after confinement with wages or pay. Maternity leave may be granted in continuation of medical leave. If an employee is covered by the Social Security Law 2012, he/she has the right to enjoy benefits in accordance with the Social Security Law.

**DISCRIMINATION**

The employer shall not discriminate or fail to honor employment rights equally on the grounds of the employee being a member of a labor organization, nationality, religion, race, sex and age.

Employees are entitled to the prescribed minimum wage without discrimination on the basis of gender.
BENEFITS & PENSIONS

There are no mandatory pension obligations, except for civil servants. A retired employee who has paid contributions to the Health and Social Care fund for at least 180 months is entitled to medical treatment provided by a specified clinic.

Some companies voluntarily provide benefits, such as private health insurance coverage, provident funds, other savings plans, and employee stock option plans (ESOPs), for their employees. Voluntary benefits are not regulated and are offered through and detailed within internal company policies or other documentation; thus, information on the extent of voluntary benefits that companies are providing is scarce.

DATA PRIVACY

There are not currently any specific laws or regulations in Myanmar relating to data privacy. However, per the Law Protecting the Privacy and Security of Citizens enacted on March 8, 2017, a person is not allowed to do the following without permission of the relevant authorities:

- Request or acquire any private call data, electronic communications data and information from operators or supply such information
- Open, search, seize, destroy or damage any envelope, parcel or correspondence communicated that are the personal affairs of other individuals and
- Criticize or interfere in the personal affairs and family affairs of any citizen or engage in conduct that may be detrimental to the good name, standing or dignity of an individual

Other than the above, there are currently no other laws or regulations on data privacy.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

There are no specific rules governing employment implications of transactions/business transfers, other than as below.

An employer must pay a statutorily prescribed severance payment to the affected employees in accordance with relevant laws in the case of the employer’s breach of contract, liquidation, sale of the business, winding-up the business or reducing the number of workers.

The severance payment is based on the length of time the employee has continuously served the employer, and on the basis of the employee’s last salary (without overtime premium). See "severance" below.

EMPLOYEE REPRESENTATION

Labor organizations (that is, the labor organization of the employer’s trade/establishment, which function as a union) represent employees in Myanmar. The employer must recognize the labor organizations relevant to its
industry. If there are more than 30 employees, a Workplace Coordinating Committee (WCC) must be established. The WCC is formed by 2 elected worker representatives and 2 employer representatives. If a labor union is already active, then the worker representatives come from the union. The employer must assist as much as possible if the labor organization requests help. Labor organizations have the right to participate in collective bargaining on behalf of the workers. The employer must not discriminate against employees who are union/labor organization members.

The labor organization shall decide who should be its representatives, who carry out negotiations with the employer on terms and conditions of employment and in settling the collective bargaining matters of workers in accordance with labor laws.

The employer must allow any worker who is assigned any duty on the recommendation of the relevant executive committee of a labor organization to perform such duty not exceeding 2 days per month unless otherwise agreed.

TERMINATION

Grounds

Based on the standard employment contract (see above under Employment Contract and Policies), termination is possible in the following circumstances:

- Liquidation of the factory/company
- Winding up the employer’s business due to force majeure or
- Death of employee

All employers must ensure their employment contract/an annex to it provides a list of misconduct offences. Although not an exclusive list, typical grounds for termination for cause are listed in the "work rules" annex to the standard issue government employment contract. These are:

- Stealing, accepting stolen goods, misusing, or helping to misuse, work-related property
- Intentionally destroying, or helping to destroy, the property of the factory/company
- Quarrelling among employees, injuring another employee or causing conflicts
- Committing morality-related crimes in the workplace
- Corruption
- Bringing alcohol to, or selling or drinking alcohol at, the workplace
- Gambling at the workplace
- Keeping, distributing, selling or using narcotic drugs
• Smoking or using fire at the work place
• Bringing prohibited materials or explosives
• Entering restricted areas of the factory/company
• Breaking secrets, revealing confidential information, formulae, statistics or technologies of the company to others, or taking photos thereof
• Being arrested and sentenced in criminal cases
• Failing to come to work for 3 days continuously or for 5 days during a month without permission from the employer or manager

If an employee is not in compliance with work obligations, then the employee must have received 3 written prior warnings, with an undertaking given by the employee on the third warning, of poor performance and have been provided with the opportunity to rectify his or her conduct prior to termination of employment.

Employees subject to termination laws

All.

Restricted or prohibited terminations

An employer is not permitted to terminate an employee who did not breach the existing laws, rules or the employment contract.

Third-party approval for termination/termination documents

None.

Mass layoff rules

An employer may terminate the employment of an employee as a result of closure, or a necessary change or restructuring of the business. In any cases of making changes to employment conditions such as changes of employer or changes of work place or changes of work nature, the employer must report these to the TLO within 10 days with the prescribed Form. Workforce reductions or termination of employment, must be effected in coordination with a workplace union and the WCC, if no union exists in the workplace, coordination should be directly with the WCC.

Notice

Either party may terminate the relationship by giving 1 months’ notice, but the employer must have a basis for termination.

Statutory right to pay in lieu of notice or garden leave

Myanmar laws do not provide payment in lieu of notice or garden leave, but it is often written into employment contracts or internal policies, or agreed upon at the time of termination.
Severance

The employer shall, in respect of the termination of an employment contract of an employee having worked continuously, make severance payments on the basis of his/her last salary (without overtime premium) as follows:

<table>
<thead>
<tr>
<th>Periods of service</th>
<th>Severance (Monthly Salary)</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 months to less than 1 year</td>
<td>½</td>
</tr>
<tr>
<td>1 year to less than 2 years</td>
<td>1</td>
</tr>
<tr>
<td>2 years to less than 3 years</td>
<td>1½</td>
</tr>
<tr>
<td>3 years to less than 4 years</td>
<td>3</td>
</tr>
<tr>
<td>4 years to less than 6 years</td>
<td>4</td>
</tr>
<tr>
<td>6 years to less than 8 years</td>
<td>5</td>
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<tr>
<td>8 years to less than 10 years</td>
<td>6</td>
</tr>
<tr>
<td>10 years to less than 20 years</td>
<td>8</td>
</tr>
<tr>
<td>20 years to less than 25 years</td>
<td>10</td>
</tr>
<tr>
<td>From the completion of and more than 25 years</td>
<td>13</td>
</tr>
</tbody>
</table>

**POST-TERMINATION RESTRAINTS**

**Non-competes**

The labor legislation does not regulate non-compete clauses; employers may include such provisions in employment documentation. Sometimes their inclusion might raise issues at the time of registration of the contract with the TLO.

**Customer non-solicits**

These provisions are often included in executive level employment contracts, but are not regulated by law and sometimes raise issues at the time of registration of employment contracts with the TLO.

**Employee non-solicits**

Same as customer non-solicits.

**WAIVERS**

The waiver of statutory rights is not regulated in the labor laws of Myanmar. The enforceability of a waiver of
claims by an employee is not addressed by law. Where a waiver is desirable, it is recommended that employers allow an employee a reasonable amount of time to seek legal advice before requiring them to sign the waiver.

**REMEDIES**

**Discrimination**

The employer shall not discriminate or fail to honor the employment rights equally on the grounds of the employee being a member of a labor organization, nationality, religion, race, sex and age. The employees shall be entitled to the prescribed minimum wage without discrimination on grounds of gender.

**Unfair dismissal**

An employer is not permitted to terminate an employee who did not breach existing laws, work rules or their employment contract.

In the case of an individual dispute, a worker who claims unfair termination may present a claim to the WCC for internal resolution. The claim shall be negotiated and settled by the WCC within 5 days from the receipt day of the claim. If not successful, a worker may submit a complaint to the Township Conciliation Body and if the worker is not satisfied with the outcome, he/she may file a claim with a competent court for unfair dismissal. In the case of a collective dispute, if the workers are not satisfied with the decision of Township Conciliation Body, they may submit a complaint to the Arbitration Body, then the Arbitration Council. The Arbitration Council must form a Tribunal to settle the case. The Tribunal will make a final decision. If the Arbitration Council or Tribunal finds the termination to be unfair, it has the power to:

- Order the re-instatement of the employee and treat the employee in all respects as if the employment had not been terminated
- Order the re-engagement of the employee in work comparable to that in which the employee was employed prior to his/her dismissal, or other reasonably suitable work, at the same wage
- Order the employer to pay compensation to the worker

**Failure to inform & consult**

Per the standard employment contract, mass redundancies shall be carried out in coordination with the workplace union, or if none exists in the workplace, then with the Workplace Coordination Committee through its representative. Breach of the standard contract can result in fines or imprisonment.

**CRIMINAL SANCTIONS**

If any employer fails to sign an employment contract, it can be punished with imprisonment for not more than 6 months, a fine, or both.

If anyone violates any matters contained in an employment contract, he/she shall be punished with imprisonment for not more than 3 months, a fine, or both.
Employers or employees may be criminally liable for certain violations and subject to a fine, imprisonment, or both.

KEY CONTACTS
NETHERLANDS

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of the European Union, so required to implement relevant EU directives. The official currency is the Euro (EUR). The official language is Dutch.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Foreign entities may directly engage employees in the Netherlands, subject to doing-business and tax considerations. Registration with the Dutch tax authorities as an employer – to make mandatory payroll deductions – is required.

PRE-HIRE CHECKS

Required

Immigration compliance. For certain limited provisions (e.g., judges, lawyers and advocates), an applicant must provide a recent copy proving that they have no criminal record that should prevent them from performing their duty (verklaring omtrent gedrag).

Permissible

Reference checks are common and permissible with the applicant’s consent. Other checks are only permissible in limited situations.

IMMIGRATION

Most nationals of the European Economic Area (EEA) and Switzerland are allowed to work in the Netherlands, although they should be registered. Other nationals should have a proper visa that allows them to work in the Netherlands.

HIRING OPTIONS
Employee

Indefinite, fixed-term, full-time or part-time, zero-hours, on-call. Fixed-term employees may gain an indefinite employment status after a certain time and cannot be discriminated against due to their status. With regard to on-call employees and employees with zero-hour contracts, it is mandatory to offer a contract with a fixed number of hours after they have been employed for at least 12 months.

Independent contractor

With regard to independent contractors, there are no limitations imposed by law and thus no maximum term for hiring an independent contractor. There is, however, the possibility of exposure of deemed employment. The actual circumstances under which the contract is conducted are decisive in regard to the question of whether the work relationship should be considered an employment relation.

Under Dutch law, irrespective of the label given to a contract, an employment agreement will be deemed to exist between 2 parties if:

- The work must be performed in person
- Salary is paid and
- There is a relationship of authority between the individual and the company.

It is important to assess up front if the contract is in fact an employment contract "in disguise." If, based on the facts, this appears to be the case, the independent contractor should be regarded as an employee – so all employee and dismissal protections will apply – and Dutch wage tax and social premiums will be due.

To limit the tax and social security risk, parties may use model agreements, published on the website of the Dutch tax authorities, or submit the contract to the Dutch tax authorities to receive confirmation on the qualification of the contract in a ruling. If Dutch tax authorities confirm the absence of an employment relationship in a ruling, they can, in principle, not recover wage tax and social premiums from the client with respect to that contract.

On January 11, 2021, the Dutch government introduced a new online tool with regard to the legal classification of independent contractors: the Web Module for Assessment of Employment Relationships. The Web Module is an online questionnaire which companies can use to obtain clarity about whether an assignment can be carried out by a contractor instead of an employee. The Web Module will provide 1 of the 3 possible outcomes: contractor, employee or no judgement possible. The Web Module does not yet have legal status, but the outcome of its assessment may be used by companies to review – and reconsider – their working relationship with contractors.

Agency worker

Agency workers are common and cannot be discriminated against due to their status.

Employees who are placed in the organization through a payroll-provider/employer of record (PEO) are entitled to terms of employment that are equal to the terms of employment of “regular” employees of the organization – or terms of employment that are in line with sector common practice, if there are no regular employees within the organization.
EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

Common best practice, but in any case, the following must form part of the employment contract:

- Parties' names
- Work location
- Job/position
- Start date
- Duration of the employment
- Holiday entitlement
- Notice periods
- Salary
- Working hours and
- Pension entitlement.

Further required content will depend on the requirements of any applicable collective employment agreement.

Probationary periods

Probationary periods are permissible. The maximum statutory probationary period for indefinite-term contracts and fixed-term contracts for 2 years or more is 2 months.

It is not permissible to include a probationary period in a fixed-term employment contract of 6 months or less. It is not possible to deviate from this via a collective labor agreement (CLA).

In case of a fixed-term contract of more than 6 months and less than 2 years, a probationary period of 1 month is allowed. Under a CLA, it is possible to extend the probationary period to a maximum of 2 months.

Policies

The following policies are mandatory:

- Whistleblowing policy (if a company employs 50 or more employees)
- Hazard identification and risk assessment (RI&E)
- Work health and safety policy (which includes policies aimed at preventing, or, if not possible, limiting,
pressure at work due to a high workload, discrimination, harassment and bullying).

Third-party approval

No requirement to lodge employment contract or policies with or get approval from any third party.

**LANGUAGE REQUIREMENTS**

No statutory requirements, although the employer must make sure that the employee understands the relevant provisions.

**MINIMUM EMPLOYMENT RIGHTS**

Employees entitled to minimum employment rights

All.

**Working hours**

A full-time working week usually consists of 40 hours. Collective agreements might set different full-time working hours (e.g., 36 or 38 hours per week).

**Overtime**

No statutory obligation to provide pay for overtime worked as long as pay overall does not fall below the statutory minimum. Collective employment agreements might set different obligations.

**Wages**

Depends on the employee's age. The minimum daily wage for employees of the age of 21 years and older is EUR 78.51 per day and EUR 1,701 per month as of January 1, 2022.

Under the Minimum Wage Act, it is mandatory to pay a holiday allowance of 8 percent of the yearly salary, unless an employee earns more than 3 times the minimum wage and the parties have explicitly agreed in writing to exclude the 8-percent holiday allowance.

**Vacation**

Based on a full-time week: 20 days per year, excluding public holidays, is the statutory required minimum. It is common practice to give between 24 and 28 days per year.

**Sick leave & pay**

In case of occupational disability, an employer must pay at least 70 percent of the most recent gross salary plus holiday allowance to the employee for up to 2 years. The salary is capped at 70 percent of the "maximum daily wage" (i.e., EUR 160.13 per day and EUR 3,482.87 per month as of January 1, 2022) and must, during the first 52
weeks of illness, not be below the statutory minimum wage rate. It is common practice (and, as such, is set out in most CLAs) to pay 100 percent of the full salary during the first year of illness and 70 percent of full salary during the second year.

**Maternity/parental leave & pay**

16 weeks’ maternity leave and, after that, a right to return to the employee’s own position. During maternity leave, the employee is entitled to a maternity allowance. The employer continues to pay the full salary of the employee. However, the Employee Insurance Agency reimburses a part of the regular salary to the employer, capped at the maximum daily wage. Statutory possibility of unpaid parental leave during a part of the working week over a certain amount of time before the youngest child turns 8 years old.

An employee who becomes a father is entitled to 5 days of paid paternity leave. In addition, as from July 1, 2020 and in the first 6 months after birth, there is an additional leave entitlement of 5 weeks in case of a full-time employee (ie, additional paternity leave or partner leave). This is not paid by the employer. An employee who takes additional leave is eligible for state benefits of up to 70 percent of the daily wage.

Beginning on August 2, 2022, parents will receive 9 additional weeks of partially paid parental leave. Payment for this is provided by the government, and, as the program is currently envisaged, the employee will likely receive 70 percent percent of his/her last earned wage, capped at 70 percent of the “maximum daily wage.” The leave may be taken during the first year after welcoming a child.

**DISCRIMINATION**

Characteristics protected from unlawful discrimination and harassment include age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex or sexual orientation.

**BENEFITS & PENSIONS**

In many industry sectors, a mandatory industrywide pension fund applies. Employees who work in such a sector are required by law to participate in that pension fund, and their employers are required by law to pay pension premiums to the fund. In sectors without such an industrywide pension fund, the employer usually sets up its own pension plan for its employees.

**DATA PRIVACY**

Employees generally must be notified of personal data processing – and, in certain cases, give consent. Registrations with the Information Commissioner are required. Special rules apply to data transfer outside the EEA. Significant restrictions on monitoring email and internet use.

From May 2018, the country is subject to the General Data Protection Regulation (GDPR), which introduces significant new obligations and onerous sanctions for employers. In general, the GDPR aims at empowering individuals (including temporary employees, job applicants, contractors, trainees and other workers) with regard to controlling the use of their personal data and at harmonizing the data protection legislation across the EU.
RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Automatic transfer under the EU Acquired Rights Directive/Dutch civil code in a business sale or service provision change. Significant restrictions on changing terms and conditions following a transfer. Duty to inform and consult with employee representatives. Any dismissal connected to the transfer would be unfair unless for an economic, technical or organizational reason. Works council has the right to advise.

EMPLOYEE REPRESENTATION

Trade unions are prevalent in a number of sectors. Works councils are common and have significant rights. If the company has 50 or more employees, the company is obliged to establish a works council. Beginning on January 2022, temporary agency workers who have been at the company for 15 months will be included in the employee headcount threshold (of 50 or more). If there are more than 10 employees, but fewer than 50 employees, the company must create the possibility to meet with the employees twice a year. Industry-level collective bargaining agreements are common.

TERMINATION

Grounds

Termination is permissible on misconduct, performance, redundancy or other substantial grounds. Dismissal is only possible on the basis of one of the reasons specified in the new Dutch legislation.

Employees subject to termination laws

All.

Restricted or prohibited terminations

Members of a European Works Council, employees on their first 2 years of sick leave, pregnant employees and employees on military service.

These prohibitions on termination do not apply in the event that:

- An employee consents to the termination in writing
- The termination takes place during the probationary period
- The termination is, by operation of law, due to the expiry of a fixed-term contract
- The termination is a dismissal with immediate effect
- There is a company closure (though the termination of employees who are pregnant or on maternity leave in that event still prohibited/restricted) or
- The termination takes place because the pensionable age has been reached.
In 2019, the EU passed the Whistleblower Protection Directive, which had a deadline of December 17, 2021 for Member States to incorporate into their national laws. The Directive provides for minimum standards that must be adopted, including protections for covered individuals who report a breach of EU law in any prescribed area. An individual who meets the conditions for protection under the Directive is safeguarded from any form of retaliation, as well as from threats of or attempt at retaliation (which is defined broadly). EU Member States are in various stages of implementation. See DLA Piper EU Whistleblower Directive: Implementation Tracker for more information.

**Third-party approval for termination/termination documents**

Employers do not need any third-party approval for:

- Immediate termination due to an urgent reason
- Termination during a probationary period
- Termination by operation of law due to expiry of a fixed-term contract or
- Mutual consent termination.

In all other situations, employers must either seek approval of the Dutch Employee Insurance Agency (UWV) or request a court to dissolve the employment agreement. Mutual consent terminations are common.

**Mass layoff rules**

Strict information and consultation rules apply in situations where 20 or more employees are to be made redundant within a period of 3 months or less.

**Notice**

The notice period that must be given by the employee is 1 month. For the employer, notice requirements depend on the duration of the employment:

- Less than 5 years requires 1 months' notice
- Between 5 and 10 years requires 2 months' notice
- Between 10 and 15 years requires 3 months' notice and
- 15 years or more requires 4 months' notice.

It is permissible to agree a longer notice period to be given by the employee in an employment contract, provided that the notice period to be given by the employer is at least double that period (i.e., 2 months for the employee and 4 months for the employer). The notice period to be given by the employee cannot be longer than 6 months. With the consent of the employee, employers can, but are not required to, make a payment in lieu of notice.

**Statutory right to pay in lieu of notice or garden leave**

No.
Severance

Severance pay regulations are arranged by law, under a so-called transition payment. The statutory transition payment is due when the employment agreement has been terminated, and the amount is based on years of service:

- \( \frac{1}{3} \) of 1 month’s salary (including holiday allowance and, if any, fixed end-of-year bonus and/or average bonus of the last 3 years and/or commission of the last 12 months) for each calendar year that the employment agreement has lasted, and a pro rata amount for a period where the employment agreement has lasted less or longer than a calendar year.

The maximum transition payment for 2022 amounts to EUR 86,000 gross or, where an employee earns over EUR 86,000 per annum, a maximum of 1 year’s salary.

Waivers

Enforceable, but employees must be given time to consider and to seek legal help.

POST-TERMINATION RESTRAINTS

Non-competes

Post-employment restraints to protect against competition are common in the Netherlands and are included in almost every employment agreement. Typically, such restraints remain in effect for up to 1 year after termination of employment. Non-competition clauses in fixed-term employment contracts are not allowed unless they are necessary to protect a legitimate business interest and the business interests are clearly described in the employment agreement. Published rulings have shown that this is a high threshold; therefore, it is common not to include a non-competition clause in fixed-term employment agreements.

No payment required for enforceability.

Customer non-solicits

Permissible under the same conditions as described above under non-competes.

Employee non-solicits

Permissible.

WAIVERS

Not applicable for this jurisdiction.

REMEDIES

Discrimination
Compensation depends on damages.

Unfair dismissal

An employee may obtain a court order to be reinstated or can demand an additional "fair compensation" on top of the statutory transition payment.

Failure to inform & consult

Works councils may litigate certain decisions of the company – that is, they may file an appeal with the Enterprise Chamber and request revocation of the company’s decision.

CRIMINAL SANCTIONS

Criminal sanctions are not generally a concern.

KEY CONTACTS

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NEW ZEALAND

LEGAL SYSTEM, CURRENCY, LANGUAGE

Common law. The official currency is the New Zealand dollar (NZD). The official language is English.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign company employing staff in New Zealand is required to register with the Inland Revenue Department (IRD) as an employer and set up an IRD number, with a limited range of exceptions.

Employment income is subject to tax at source in that the employer must withhold the tax and return this to the IRD under the pay-as-you-earn (PAYE) regime.

PRE-HIRE CHECKS

Permissible, where appropriate for the role. Required in some industries, eg childcare.

Immigration compliance

Permissible.

Criminal, reference and credit reference checks are permissible but are subject to the candidate's consent. Credit checks are only appropriate where the role involves significant financial risk (eg, credit controller).

IMMIGRATION

Nationals and permanent residents of New Zealand and Australia have the right to work in New Zealand; however, all other immigrants have to apply for 1 of the following visas:

- Essential Skills work visas
- Skilled Migrant Category Work to Residence visas
• Residence from Work/Investor/Entrepreneur (various categories)

HIRING OPTIONS

Employee

Individuals may be recruited on either a full-time, part-time or casual basis (meaning they are employed by the hour or day) or on a fixed-term contract for a limited period. Various criteria must be met for valid casual or fixed-term employment.

Independent contractor

Independent contractors may be engaged directly by the company or via a personal services company.

Agency worker

Temporary workers are used by some organizations for short periods. The most common forms of temporary labor in New Zealand include casual employees and fixed-term employees. Agency workers are engaged by the agency, not the employer for which they are placed to work.

Employers may engage casual employees on an as-needed basis. While casual employment relationships are not governed by legislation, employers must be cautious that the employee does not “drift” into permanent employment status.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

An employment agreement must be in writing and must contain certain minimum terms such as the names of the parties, a description of the work to be performed, the agreed hours that the employee will work, the wage rate or salary payable and how it will be paid, how employment relationship problems will be resolved, that personal grievances must be raised within 90 days, an employment protection provision, a statement that the employee will get (at least) time-and-a-half payment for working on a public holiday (and, in some cases, a day in lieu) and any other matters agreed on, such as trial periods, probationary arrangements, availability provisions or the nature of the employment if the employment is fixed-term, among others.

Probationary periods

A trial period is permissible for a period of 90 days at the start of a new employee’s employment, but only for employers with fewer than 20 employees. Employees whose employment is terminated during a valid trial period are unable to raise a personal grievance with respect to their dismissal.

Otherwise, employers may include probationary periods in their employment agreements. However, during a probationary period, the employer must still undertake a fair process before dismissing an employee and an employee may still raise a personal grievance with respect to their dismissal.

Policies
Not mandatory, but some policies – especially regarding anti-discrimination and harassment, bullying and health and safety – are recommended.

Third-party approval

No requirement to lodge employment contracts or policies with or get approval from a third party.

LANGUAGE REQUIREMENTS

No statutory requirements, but all documents should be in English.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights


Working hours

Standard working hours are 40 hours per week, although employers may require an employee to work reasonable additional hours.

Overtime

Overtime payment may be provided for in individual or collective employment agreements but is not required. If no overtime is payable, the employment agreement should explicitly state that remuneration covers both additional hours and the employee’s availability to work those additional hours.

Wages

The national adult minimum wage rate for employees aged 16 years or older is NZD20 per hour before tax.

Vacation

4 weeks’ paid annual leave per year after 12 months of continuous employment.

Sick leave and pay

As of July 24, 2021, employees are entitled to 10 days’ sick leave per year after 6 months of continuous employment. Employees may carry over accrued sick leave up to a total of 20 days.

Domestic violence leave

Employees are entitled to up to 10 paid days off a year due to domestic violence. The employee can also ask for flexible work arrangements for up to 2 months.

Bereavement leave
After 6 months of continuous employment, an employee is entitled to 3 days of bereavement leave where a member of their immediate family dies, they have a miscarriage or stillbirth, or another person has a miscarriage or stillbirth and they are either the partner (former or current) of that person or had agreed to be the primary carer or partner of the primary carer of the baby. An employee receives 1 day of bereavement leave if another person dies and the employer accepts the employee has suffered a bereavement.

Maternity/parental leave and pay

Eligible primary carers are entitled to:

- 26 weeks of paid parental leave. This leave is paid for employees and self-employed individuals. Payment is made by the government, not by employers.

- 52 weeks of extended leave (unpaid) in total (includes paid parental leave) 10 days of special leave (unpaid).

Partners are entitled to:

- 2 weeks of partners' leave (unpaid)

DISCRIMINATION

Employees are protected from discrimination and harassment under both the Employment Relations Act 2000 and the Human Rights Act 1993. Protected characteristics are age (from 16 years), color, disability, employment status, family status, marital status, political opinion, race, ethnic or national origins, religious or ethical belief, sex, sexual orientation and union involvement. An employer also cannot discriminate against an employee on the basis that the employee is, or is believed to be, an individual who has experienced domestic violence.

BENEFITS & PENSIONS

New Zealand has an optional superannuation saving scheme called KiwiSaver. Employers may provide a private superannuation scheme if they wish to.

New Zealanders qualify for a government pension payment at age 65.

DATA PRIVACY

The Privacy Act 2020 controls New Zealand data privacy and determines how employers collect, use, disclose, store and give access to "personal information."

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

New Zealand law does not contain any automatic transfer provisions except for a few limited classes of employees.
If a business is sold, transfer of employees depends on the nature of the sale.

Where a business, or part of the business, is acquired by way of an asset and goodwill purchase, the employees do not automatically transfer to the new owner but must agree to do so. Where a business, or part of the business, is acquired by way of a share purchase, the employment of employees remains unchanged.

Special provisions apply for businesses that employ "vulnerable employees." This is a special category covering, for example, cleaning and catering staff.

There are also requirements under the Employment Relations Act 2000 for there to be a process for consultation with staff in business transfer situations. These are called "Employment Protection Provisions" and are process requirements only, meaning there is no substantive right to transfer.

**EMPLOYEE REPRESENTATION**

In New Zealand, an employee may choose whether or not to be part of a union. Any union validly appointed to represent an employee or employees must be recognized and dealt with according to the law. Employers must provide new employees with an Active Choice Form, prescribed by the Ministry of Business, Innovation and Employment, which seeks information about whether the employee intends to join a union.

**TERMINATION**

**Grounds**

Termination may be brought about by mutual agreement, expiry of a fixed-term contract, termination by the employer for cause (with or without notice) or termination (i.e., resignation) by the employee.

**Who is subject to termination laws?**

All employees.

**Restricted or prohibited terminations**

Employers are prohibited from making "unjustified" dismissals and from taking adverse action against an employee for union membership or because of a protected characteristic under the Human Rights Act 1993.

**Third-party approval for termination/termination documents**

Not applicable for this jurisdiction.

**Mass layoff rules**

Employers must use a fair and reasonable process when implementing a redundancy, regardless of how many roles are impacted. An employer must show that there is a genuine commercial reason for any redundancy decision and offer to redeploy employees if possible.

**Notice**
The notice period will be set out in the employment agreement. This is often 1 month.

Statutory right to pay in lieu of notice or garden leave

Employers may pay in lieu of notice if stipulated in the employment agreement. No right to impose garden leave unless specified in the employment agreement.

Severance

No right to severance payments unless specified in the employment agreement.

POST-TERMINATION RESTRAINTS

Restraints in New Zealand are enforceable only if the restriction is no more than is reasonably necessary to protect the legitimate proprietary interests of the employer.

Non-competes

Permissible. Generally, non-competes do not apply to junior employees, but they may be enacted for up to 12 months for the most senior executive employees.

Customer non-solicits

Permissible (subject to reasonableness).

Employee non-solicits

Permissible (subject to reasonableness).

WAIVERS

Statutory rights cannot be waived; however, some contractual or common law rights may be waived by the employee.

REMEDIES

Discrimination

If employees believe they have been subjected to discrimination, they may apply for a remedy under either the Employment Relations Act 2000 or the Human Rights Act 1993. Potential sanctions include compensation, declarations, orders and recommendations.

Unfair dismissal

If the Employment Relations Authority determines an employee has been unjustifiably (unfairly) dismissed, the employee may be awarded lost remuneration, compensation and/or reinstatement. If requested by the employee, reinstatement will be the first course of action considered by the Employment Relations Authority.
Failure to inform and consult

An employer who does not consult with an employee in circumstances where the employer's decision may "adversely affect" the employee's employment may be liable to an unjustified dismissal or disadvantage claim in the Employment Relations Authority.

CRIMINAL SANCTIONS

Generally, none. However, there are criminal sanctions for breach of relevant health and safety laws.

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LEGAL SYSTEM, CURRENCY, LANGUAGE

The legal system in Nigeria consists of a) Nigerian legislation; b) English law, which includes the common law, doctrine of equity and statutes of general application in force in England on January 1, 1900; c) Sharia law, applicable in some parts of the North, and customary law; and d) judicial precedent.

The official currency is the Nigerian Naira (NGN). The official language is English.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Foreign entities not registered in Nigeria cannot carry on business or exercise the powers of a registered company. The powers of a registered company include the employment of staff.

Payroll deductions from employees' salary in Nigeria are:

- 8 percent of an employee's monthly salary as pension
- Personal income tax (pay-as-you-earn) and
- 2.5 percent of the monthly salary of an employee with a basic minimum salary of NGN3,000 per annum to the Federal Mortgage Bank of Nigeria.

PRE-HIRE CHECKS

Required

Immigration compliance.

Medical examination for manual and clerical workers.

Permissible

Background checks for education, prior employment and basic personal information such as proof of identity and
residential address, health checks and credit information are accepted in Nigeria. In practice, the prospective employee’s consent is sought before such checks are carried out.

**IMMIGRATION**

**Expatriate Quota**

An Expatriate Quota must be obtained by the employer from the Ministry of Interior Affairs to employ expatriates for up to 12 months and above. The Expatriate Quota is waived for entities that operate within the Nigeria Free Trade Zones.

Operators within the oil and gas industry are required to obtain the prior approval of the Nigerian Content Development and Monitoring Board for the Expatriate Quota before obtaining the approval of the Ministry of Interior Affairs.

**Temporary Work Permit**

A Temporary Work Visa allows an expatriate to enter into Nigeria to provide technical services for a short term – usually between 1 and 3 months. Subject to a Regularization visa: entry visa issued by the Nigeria Mission in the expatriate’s country of residence or domicile in the last 6 months.

**Subject to Regularisation Visa**

A Subject to Regularization Visa is an entry visa issued to expatriates or other foreign workers who wish to work and remain in Nigeria on a long-term basis. The visa is issued by the Nigeria Mission in the expatriate’s country of origin or domicile in the last 6 months.

**CERPAC**

A combination of an Expatriate’s Resident Permit and Alien’s Card (ie, Cerpac) comprises the resident permit (ie, green card) and the alien’s movement card (ie, brown card). It is required for expatriates who are resident or working in Nigeria.

Cerpac provides a multiple re-entry visa facility to holders throughout the validity period.

Companies that have been granted the Expatriate Quota and utilize it for their expatriates are required to file monthly returns at the regulatory agencies for the duration of their use of the Expatriate Quota.

To be eligible for Cerpac the following conditions must be met:

1. The expatriate must have secured employment in Nigeria;
2. The expatriate must either have (a) travelled to Nigeria with a Subject to Regularization Visa or (b) been working in Nigeria and obtained (or applied for issuance of) Cerpac in the name of the previous employer, before seeking a new employment with the current employer.
3. The employer must have a valid Expatriate Quota.

There are no provisions under the Immigration Act for the conversion of any other form of visa including TWP, business or visiting visa, to Cerpac. As of September 2019, all foreign nationals who are above the age of 18 years
and wish to remain in Nigeria for a period exceeding 90 days must also undertake biometric capturing or e-registration in their respective states of residence.

HIRING OPTIONS

Employee

Indefinite, fixed-term, full-time, part-time or casual.

Independent contractor

Independent contractors may be engaged directly by the company or through another entity (eg, outsourcing or recruitment agency).

Agency worker

Agency workers are usually recruited by agencies and seconded by agencies or recruitment companies to render services for a fixed period or as may be required. There is no limit prescribed by law. The contract between the agent and the company typically provides for the duration of the engagement. The agency workers remain the employees of the recruitment agency, and the companies they are seconded to have no payroll responsibilities or obligations towards them.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

For manual and clerical workers, the employer is required to provide the employee with a written employment contract no later than 3 months after commencement of employment.

In practice, most employers issue the employment contract before commencement of the employment. For other employees, employment agreements are not legally required but in practice are commonly used.

Probationary periods

Permissible. No statutory provision, but the common practice is between 3 and 6 months.

Policies

There are no mandatory policy requirements. Policies are permissible and form part of the employment contract if referenced or expressly incorporated therein.

Third-party approval

No requirement to file employment contracts or policies with, or get approval from, any third party. However, collective agreements are to be registered with the Ministry of Labor.

LANGUAGE REQUIREMENTS
No statutory language requirement in Nigeria, but the official language is English.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

Manual and clerical workers. Other employees are not subject to the minimum employment rights prescribed by law, but such employment rights are generally stated in the employee’s contract of employment.

Working hours

Normal hours of work are fixed either by mutual agreement, by collective bargaining within the organization or by an industrial wages board. There is no statutory limit on working time. The usual industry practice is that an employee works for 40 hours in a week.

Overtime

Overtime must be paid for, but the rate to be paid is not specified by law.

Wages

An employer is required to pay wages to an employee at the end of the period during which the contract exists or as may be agreed upon. However, every employer is legally mandated to pay a wage not less than the National Minimum Wage of NGN30,000 per month. The National Minimum Wage was reviewed upwards in 2020 by the federal government following negotiation with organized labor.

Vacation

A manual or clerical worker is entitled to a minimum of 6 working days’ leave after 12 months’ continuous service. In practice, employees are usually granted between 2 and 6 weeks’ vacation for every 12-month period.

Sick leave & pay

An employee is eligible to be paid wages up to 12 days in a calendar year during absence from work caused by illness certified by a registered medical practitioner. The period of eligibility for sick leave is contractual and therefore subject to the provisions of the applicable agreement governing the employment relationship.

Maternity/parental leave & pay

A pregnant woman is entitled to maternity leave for 6 weeks before delivery and 6 weeks after delivery, and also to be paid not less than 50 percent of her salary if she has worked continuously for a period of 6 months or more.

The Labor Act only provides for maternity leave and pay. Any other parental leave and pay is subject to the provisions of the contract of employment, but not mandatory.
DISCRIMINATION

The Nigerian Constitution prohibits discrimination on grounds of gender, religion, age, political affinity and ethnic/tribal group.

BENEFITS & PENSIONS

Employees are entitled to the following benefits under the Nigerian law: life insurance, employer’s contributions (minimum 10 percent of monthly salary) to the employee’s retirement saving account, medical care under the National Health Insurance Scheme paid for by the employer, contribution to National Social Insurance Trust Fund for social security payments for occupational injury or disease – the employer is required to pay a monthly contribution of 1 percent of the monthly payroll of all employees.

Pension and Life Insurance

The Pension Reform Act prescribes a contributory pension scheme for organizations with 15 or more employees. An employer must deduct a minimum of 8 percent of an employee’s monthly salary and an additional minimum of 10 percent is contributed by the employer towards the employee’s pension.

The Pension Reform Act also mandates every employer to maintain at its own cost a group life insurance policy in favor of its employees, for a minimum of 3 times the annual total salary of the employee. Where the employer fails to maintain a group life insurance policy, the employer shall make arrangements to effect payment of any claims arising from the death of any staff in his or her employment.

National Health Insurance Scheme

The National Health Insurance Scheme Act and Guidelines provide that employers with 10 or more employees are required to provide healthcare at their cost for their employees, the employees’ spouse and up to 4 children below the age of 18 years, under the medical scheme run by the company with a Health Maintenance Organization. The employer shall deduct from the employee’s wages, the amount payable by the employee and remit all employer and employee contributions directly to the designated health maintenance organization.

DATA PRIVACY

The National Information Technology Development Agency published the Nigeria Data Protection Regulation, 2019 which safeguards the rights of natural persons to data privacy.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

No legislation on transaction/business transfers except if provided in the employment contract. Where the contract of employment does not provide for a transfer of undertaking, consent of the employees is required for the transfer of the employment. Termination and rehire is an alternative.

The Labor Act prescribes that where an employer seeks to transfer any employee to another employer further to a transfer of business, the transfer shall be subject to the consent of the employee and the endorsement of the transfer upon the contract by an authorized Ministry of Labor officer. The Labour Act is silent on when employee
consent must be secured. However, it is best practice to secure consent before or at the time the transaction agreement is signed in order to avoid potential issues. This process is only applicable to the class of workers that are covered by the Labor Act, i.e., manual labour or clerical workers.

For other categories of employees not covered by the Act, employers are not required to notify or inform employees prior to entering into transactions for the transfer of a business. The transfer of employees, and any consequential notifications, will therefore depend on the terms of the employment contract.

EMPLOYEE REPRESENTATION

Nigeria has various trade unions, which are prevalent across all sectors of the economy. The Constitution of the Federal Republic of Nigeria and the Trade Union Act provide that membership of a trade union by employees shall be voluntary. Where an employee elects to join a trade union, the employee shall not be restricted, victimized or otherwise discriminated against by the employer.

An employer is also required to deduct dues from the wages of all employees who are registered trade union members and remit such deductions to the registered office of the applicable trade union.

It is a fundamental right to form or belong to a trade union of one’s choice. The trade unions representing the employees sometimes negotiate conditions of employment for their members with the employers or the trade bodies representing the employers. The outcome of the negotiation is usually contained in a collective bargaining agreement (CBA). The provisions of the CBA are generally unenforceable by individual employees unless incorporated in the employment contract or policies.

There are no other forms of employee representation.

TERMINATION

Grounds

Usually, the employment contract provides for termination of employment, and, where the contract of employment makes explicit provision for termination, said termination of the employment must be done in accordance with the prescribed procedure. The statutory obligation which applies only to manual and clerical workers is that required notice is given for termination of employment. Recent decisions of the National Industrial Court (NIC) state that employers are required to state valid reasons for the termination in the notice of termination. Failure to do so will amount to wrongful termination and give rise to a cause of action for breach of contract. This must be affirmed by the Supreme Court – the highest court – to be widely judicially recognized.

Employees subject to termination laws

All employees.

Restricted or prohibited terminations

Termination of employment is prohibited during maternity leave. In addition, employees in the oil and gas industry cannot be terminated without the consent of the Department of Petroleum Resources (DPR).
Third-party approval for termination/termination documents

No third-party approval for termination or termination documents, except in the oil and gas industry, where the consent of the DPR is required.

Mass layoff rules

An employer may terminate an employment on the basis of a mass layoff/redundancy. However, there are prescribed rules that must be complied with. The redundancy must be within the meaning of the Labor Act, which defines redundancy as an involuntary and permanent loss of employment caused by an excess of manpower.

In the event of redundancy, the employer is required to inform the trade union, if any, of the reason and the extent of the anticipated redundancy. The principle of "last in, first out" shall be adopted in the discharge of the particular category of workers affected, subject to factors such as skill, ability and reliability. Employers are also expected to use their best efforts to negotiate redundancy payments.

Where the employee falls within the scope of the Labor Act, the following steps must be taken in a redundancy:

1. The principle of "last in, first out" must be adopted in the termination of employees by redundancy, subject to all factors of relative merit, including skill, ability and reliability
2. The employer is required to negotiate redundancy payment with the affected workers and
3. Where the employee is a member of a trade union, the employer must notify the applicable trade union of the reasons for the redundancy.

Please note that this process applies to only manual and clerical workers. For other categories of employees, the steps outlined above are used as a guide but are not mandatory.

For other categories of employees not covered under the Labor Act, the terms of the individual employment contracts will determine the applicable procedure and payment on redundancy.

With regard to the oil and gas industry in Nigeria, the guidelines for release of staff which was issued by the Director of the Department of Petroleum under the Petroleum (Drilling and Production) (Amendment) Regulations, 1988 provide that the holder of an oil mining lease, license or permit issued under the Petroleum Act 1969 or regulations made thereunder or any person registered to provide any services in relation thereto shall not remove any worker from their employment except in accordance with guidelines that may be specified from time to time by the Minister. Furthermore, the prior consent of the DPR is required for the release of any worker employed by the holder of an oil mining lease, license or permit under the Petroleum Act.

In the oil and gas sector, an employer is also required to obtain the approval of the Minister of Petroleum Resources, through the DPR, prior to declaring any employee redundant.

Notice

No statutory requirement. In practice, the notice period is typically 30 days’ reciprocal notice for non-senior employees, and at least 30 days’ reciprocal notice for senior employees, as set forth in the employee’s employment agreement. Where allegations of misconduct giving rise to immediate dismissal have been made
against an employee, the employer is not required to give notice. However, the employer must provide an avenue for the employee to be heard, usually through a disciplinary hearing, and an afforded opportunities for representation prior to any decision being made on the dismissal.

**Statutory right to pay in lieu of notice or garden leave**

Where the employment contract provides for pay in lieu of notice, either party terminating the contract may decide to pay in lieu of notice. Garden leave is not provided for under the Nigerian Law and is not a common practice in Nigeria, but some employment contracts provide for the same.

**Severance**

For manual and clerical workers (who are covered by the Labor Act), redundancy pay is mandatory. The law does not stipulate the amount to be paid as redundancy pay; the law only provides that the employer should use its best endeavors to negotiate redundancy payments. For employees not covered by the Labor Act, severance pay is usually subject to the provisions of the employment contract or collective agreement.

**POST-TERMINATION RESTRAINTS**

**Non-competes**

A post-termination non-compete is only enforceable if it is reasonable with reference to the interest of the parties concerned and of the public. In deciding the question of reasonableness, the courts consider the nature of the trade or occupation, the geographical area over which the restraint is imposed and the length of time for which it is to continue.

**Customer non-solicits**

A post-termination customer non-solicit is only enforceable if it is reasonable with reference to the interest of the parties concerned and of the public. In deciding the question of reasonableness, the courts consider the nature of the trade or occupation, geographical area over which the restraint is imposed and the length of time for which it is to continue.

**Employee non-solicits**

A post-termination employee non-solicit is only enforceable if it is reasonable with reference to the interest of the parties concerned and of the public. In deciding the question of reasonableness, the courts consider the nature of the trade or occupation, geographical area over which the restraint is imposed and the length of time for which it is to continue.

**WAIVERS**

Settlement contracts agreed upon and executed by the employer and employee are legally enforceable in the courts. Such agreements are common for senior- and executive-level positions but are less common with regard to junior or mid-level employees.
**REMEDIES**

**Discrimination**

Discrimination is prohibited by law in respect of gender, religion, age, political affinity and ethnic/tribal group. There is no cap on the damages; it depends on the claim of the plaintiff.

Employees may institute a discrimination action in court. Typically, an award of general damages will be made if the claim is successful.

**Unfair dismissal**

This usually occurs where the employee feels that the dismissal was not in accordance with the provisions of the contract of employment. This is subject to the claim made by the claimant and judgment awarded by the court. There is no stipulated cap.

**Constructive dismissal**

Constructive dismissal occurs when an employer breaches a fundamental term of an employment contract, makes a unilateral change to the employment contract without notice to or consent of the employee or creates a hostile environment, which causes the employee to resign. Once one of the elements outlined above is successfully established, the claimant may be entitled to damages and compensation for loss of employment.

**Failure to inform & consult**

The courts have held that failure to notify the trade union does not invalidate the redundancy. The right conferred on trade unions is merely a right to be informed, and no sanction is provided for failure by employers to do so.

**CRIMINAL SANCTIONS**

Criminal sanctions are not applicable.

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NORWAY

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. The official currency is the Norwegian krone (NOK). The official language is Norwegian.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Any entity conducting business activity in Norway has both a duty and a right to be registered in the Norwegian Register of Business Enterprises. Following its registration, the entity is provided with a Norwegian company registration number which, among other things, is necessary in order to fulfill certain statutory obligations – for example, the payment of tax deductions and employer's contributions.

All employers pay statutory social security contributions to the national insurance scheme. The common rate is 14.1 percent. Norwegian employers are obliged to withhold income taxes and pay the employee’s tax to the taxation authorities.

PRE-HIRE CHECKS

Required

Immigration compliance. For certain occupations (eg, lawyers or accountants), a certificate of good conduct is required.

Permissible

Criminal check is only permissible for specific occupations where there is legal basis for obtaining a certificate of good conduct.

Reference checks and education checks are permissible with the applicant's consent.

IMMIGRATION

EC or EU citizens
Foreigners from EC and EU countries, who bring an identity card or a passport, are free to take residency for up to 3 months. If the employee intends to stay in Norway for more than 3 months, the employee must make a preliminary registration online and thereafter visit a police station or the service center for foreign workers for registration. Upon completion of the registration, the employee will receive a registration certificate. The certificate is valid indefinitely – it does not need to be renewed.

**Non-EC or non-EU citizens**

As a general rule, all citizens from non-EC and non-EU countries must be granted a residence permit before their arrival in Norway. Petition for a working permit is directed to the Norwegian foreign station in the applicant's country of citizenship or the country in which the applicant has had a working or resident permit for the last 6 months. For persons with specialized skills, it is also possible to apply for a work permit after arrival.

As a main rule, the applicant must have a definite job offer for a full-time position from an employer in Norway, and the pay and working conditions must be equivalent to or better than what is settled in current tariff regulations or what is customary in the line of business.

**HIRING OPTIONS**

**Employee**

The main rule is that employees are to be appointed permanently. Temporary employment is permitted in specific circumstances. Part-time employees and temporary employees have the right not to be discriminated against on the basis of such status.

**Independent contractor**

Independent contractors may be engaged. However, independent contractors must be sufficiently independent of the company in order not to be regarded as employees. This includes, for example, that the independent contractor bears the risk of the result of the work, is not restricted from also working for others and invoices all services to the company as a registered independent contractor.

**Agency worker**

Agency work is permitted to the same extent as temporary employment. Agency workers have the right to equal treatment in relation to pay and other benefits.

**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

Written employment contract required. Several minimum requirements apply to the content of an employment contract.

**Probationary periods**

Permissible. Statutory limit of 6 months.
Policies

Staff rules are required for industrial, commercial and office undertakings that employ more than 10 employees.

Third-party approval

All employees must be registered with the State Register of Employers and Employees (EE-register).

LANGUAGE REQUIREMENTS

No statutory requirements. Documents may be in English, provided that the employees have sufficient understanding of English.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All. For provisions regarding working hours, exceptions apply for employees in senior and particularly independent positions.

Working hours

Ordinary working hours must not exceed 9 hours per day and 40 hours per week. Specific rules apply for daily and weekly off-duty time, rest breaks, night work and work on Sundays.

Overtime

The employer must pay an overtime supplement of at least 40 percent of salary for work in excess of agreed working hours (ie, 9 hours per day and 40 hours per week).

Wages

No statutory minimum wage. In some sectors, collective bargaining agreements that have been made generally applicable stipulate minimum wages.

Vacation

25 working days (including Saturdays) per year, in addition to public holidays. Employees who are turning 60 during the same year have a right to 6 additional holidays.

Sick leave & pay

Statutory right to take time off for sick leave. Employees are entitled to receive sick pay for 1 year. Sick pay is provided by the employer for the first 16 days at basic salary rate and thereafter by the national insurance.

Maternity/parental leave & pay

Parents have a general shared right to leave of absence for a total of 12 months, or longer if entitled to parental
benefits. 15 weeks are reserved for the father, and 15 weeks are reserved for the mother. Allowance from the government is paid either for a period of 49 weeks at a full daily rate or 59 weeks at a reduced daily rate (ie, 80 percent). Collective bargaining agreements and individual contracts of employment may contain special regulations. In addition, parents have a right to unpaid leave for up to 12 months for each child.

**DISCRIMINATION**

Both direct and indirect discrimination is prohibited with regard to all aspects of the employment relationship.

Characteristics protected from unlawful discrimination: political views, membership of a trade union, sexual orientation, disability, gender, age, ethnic origin, national origin, descent, color, language, religion, ethical and cultural orientation, part-time work and temporary employment.

Employees and applicants with disabilities are entitled to appropriate individual adaption of their workplace and tasks.

**BENEFITS & PENSIONS**

Occupational injury insurance and contributions to a mandatory occupational pension scheme are required.

**DATA PRIVACY**

Notification to the employee is required. An obligation to notify the Data Inspectorate may apply. Significant restrictions on monitoring and control of employees. Special provisions apply for transmission of data outside the EEA.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

Automatic transfer under business transfer regulations. Rights and obligations under the employment contracts are transferred to the new employer. Restrictions on changes to terms and conditions following a transfer. Duty to inform and consult with employee representatives. The transfer is not in itself grounds for dismissal.

**EMPLOYEE REPRESENTATION**

Trade unions are common. Requirements for safety representatives and environments committees apply. Several obligations to consult with the employees’ elected representatives.

**TERMINATION**

**Grounds**

Mutual agreement, expiry of a fixed-term contract, dismissal by the employer with notice, dismissal by the employer without notice and notice given by the employee.
Termination by dismissal with notice is permissible if dismissal is objectively justified on the basis of circumstances relating to the undertaking, the employer or the employee. Termination by dismissal without notice is permissible if the employee is guilty of a gross breach of duty or other serious breach of the contract of employment.

Employees subject to termination laws

All. The chief executive may relinquish the right to employment protection in exchange for severance pay by prior agreement.

Prohibited or restricted terminations

Termination for the following reasons is prohibited or restricted:

- Supporting or not supporting statutory union recognition and de-recognition
- Trade union membership or activities or non-membership of a trade union
- Pregnancy or any reason connected with maternity
- Taking, or seeking to take, parental leave
- Sex or race
- Ethnicity, politics or religion Sexual orientation
- Age or disability
- Sickness, during the first 12 months after being unable to work

Third-party approval for termination

Not required.

Mass layoff rules

Strict information and consultation rules apply when notice of dismissal is given to 10 employees or more within a period of 30 days, for business reasons (as opposed to reasons relating to the employees).

Notification to the Labor and Welfare Service is required.

Notice

During the probationary period, 14 days’ notice is required. After the probationary period, the minimum statutory notice period for terminating an employment contract is 1 month. The notice period will be increased by 1 month for each 5 years of service, up to 10 years of service. If an employee is dismissed after at least 10 years of employment, the period of notice must be at least 4 months when given after the employee is 50 years of age, at least 5 months after the age of 55, and at least 6 months after the age of 60.

Statutory right to pay in lieu of notice or garden leave
No. All employees are entitled to work and receive full payment during the notice period. The right to notice may be waived at the time of the termination.

**Severance**

No statutory right to severance pay. However, employees often offer severance pay so the employee accepts notice.

**POST-TERMINATION RESTRAINTS**

**Non-competes**

Permissible, subject to specific criteria. No longer than 12 months. Must be in writing.

**Customer non-solicits**

Permissible, subject to specific criteria. No longer than 12 months.

**Employee non-solicits**

Permissible between employee and employer. Generally not permissible between employers, except for up to 6 months in relation to the sale of businesses.

**WAIVERS**

The Working Environment Act is, to a large extent, mandatory. The employer and the employee may not agree on terms and conditions that are less favorable to the employee than those of the Act, if not expressly stated in the Act that the provision may be departed from.

However, employees may waive their rights in relation to termination of the employment relationship in a settlement agreement upon termination of the employment.

**REMEDIES**

**Discrimination**

Right to compensation that the court deems reasonable in view of the circumstances. Compensation for financial loss.

**Unfair dismissal**

The court must rule the dismissal invalid unless this is clearly unreasonable. Right to be re-instated and/or right to compensation. The compensation is not capped.

**Failure to inform & consult**
Failure to inform and consult will often lead to a finding that the dismissal was unfair.

**CRIMINAL SANCTIONS**

Willful or negligent breach of the Working Environment Act by the proprietor, employer or person managing the undertaking in the employer’s stead is liable to a fine, imprisonment up to 3 months or both. In particularly aggravating circumstances, the penalty may be up to 2 years' imprisonment. This does not apply to breach of provisions regarding appointment and termination.

**KEY CONTACTS**

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LEGAL SYSTEM, CURRENCY, LANGUAGE

Federal and civil legal system; employment matters are governed by the Oman Labor Law issued by Royal Decree 35/2003 (Labor Law), as amended. There are also relevant provisions in the Penal Code and Civil Code. The official currency is the Omani Rial (OMR). The official language is Arabic.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

There are 3 main legal structures available to companies that wish to establish a presence in Oman: a sole proprietorship, a corporate entity or through a commercial agent. It is not possible to employ staff in Oman without an established entity.

PRE-HIRE CHECKS

Required

Foreign employees must receive prior approval from the Ministry of Manpower and immigration authorities before they can be hired on local employment contracts. The level of background checking and screening carried out by the authorities varies according to the nationality of the individual.

Permissible

Generally, employers in Oman may not obtain the same level of information from background checks as they can in other jurisdictions, and in most cases, the employees themselves will be required to provide this information.

IMMIGRATION

In order to legally work and reside in Oman, all employees except GCC and Omani nationals, who require a work permit only, are required to have a residence visa and work permit under the sponsorship of their employer, which must have an entity established in Oman – or, in the case of married women, be sponsored by their husbands.
Where an employee is only required to work in Oman for a short period of time, there are alternative permits and visas that may be applied for, including business visit visas and express visas.

**HIRING OPTIONS**

**Employee**

Unlimited or fixed-term employment contracts. If the parties to a fixed-term contract continue to honor the contractual obligations following its expiry, it is renewed automatically for an unlimited period on the same terms and conditions.

Part-time employment is permitted but is less common and applies only to Omani nationals.

**Independent contractor**

There is a limited concept of a consultant; individuals may not provide consultancy services unless they have established their own professional license and business due to the requirement that workers are prohibited from carrying out work for a company that is not their sponsor.

**Agency worker**

There is no general concept of an agency worker or "temp" in Oman. Some Omani-owned employment agencies are licensed to provide manpower on a temporary basis, and these individuals remain under their sponsorship.

**Secondee**

Workers in Oman are not permitted to carry out work for another company that is not their sponsor. However, companies sometimes enter into an agreement with a local company whereby the local company acts as a third-party host to the individuals. Such an arrangement is not legal, strictly speaking, and is most often seen in circumstances where a company does not have a local entity.

**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

Expatriate employees are required to sign a government employment contract to obtain their work permit and residence visa. This contract is in English and Arabic.

**Probationary periods**

Permissible. Maximum duration of 3 months.

**Policies**

Employers with more than 15 employees are required to have internal regulations which must be pre-approved by the Ministry of Manpower. These regulations cover, for example, working hours, leave and termination. Further, employees should be provided with any relevant staff handbook and the employer’s policies, if applicable, on commencement of employment.
Third-party approval

The government employment contract must be lodged with the Ministry of Manpower or relevant free zone authority to obtain the employee's work permit and residence visa. Strictly speaking, any contractual changes should be notified to the Ministry of Manpower and amended on the filed standard employment contract copy.

LANGUAGE REQUIREMENTS

Pursuant to the Labor Law, all employment contracts and records must be in Arabic. Where a foreign language is used in addition to Arabic, the Arabic version will prevail.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All. Additional rights are also available to young workers (ie, those under the age of 18) and women.

Working hours

The Labor Law currently guarantees workers 2 days off per week, compared to the previous 1-day minimum. To achieve this, the maximum number of working hours was reduced from 48 hours per week to 45 per week, spread over 5 days.

During Ramadan, the maximum number of working hours per week for Muslim employees is 30, spread over a 5-day working week. Oman is the only GCC country with a 5-day working week.

Overtime

9-hour maximum working day. As no more than 12 hours in total may be worked on a particular day, this means that overtime is capped at 3 hours per day.

An employee who works overtime is entitled to basic salary per hour plus:

- 25 percent for extra hours worked during the working day and
- 50 percent for extra hours at night or time off equal to the amount of overtime worked.

Wages

The minimum-wage provisions apply only to Omani workers and are regulated by ministerial decisions.

Vacation

30 days' annual leave fully paid after completion of 6 months' service.

Sick leave & pay
Employees are entitled to 10 weeks' (or 70 calendar days') sick leave per year of service (first 2 weeks on full pay, weeks 3 and 4 at 75-percent pay, weeks 5 and 6 at 50-percent full pay and weeks 7 to 10 at 25-percent pay). Termination during sick leave is not permitted.

Maternity/parental leave & pay

Female employees are entitled to 50 calendar days' maternity leave at full pay for a maximum of 3 times during their employment.

There is no concept of parental leave or pay in Oman.

Additional leave

Employees are entitled to 6 days of emergency leave per year.

DISCRIMINATION

There are no specific discrimination laws in Oman, save for 2 provisions in the Labor Law relating to non-discrimination of women employed in similar situations to men and preference for employment of Omani nationals. The Basic Law and Penal Code prohibit abuse or harassment on the grounds of gender, origin, color, language, religion, sect, domicile and social status.

BENEFITS & PENSIONS

The Public Authority for Social Insurance (PASI) pays social service benefits to Omani and GCC national employees who have subscribed to the scheme. Private sector employers are therefore required to make monthly contributions to the PASI scheme.

All other employees are entitled to receive an end-of-service gratuity (EOSG) on termination calculated by reference to salary and length of service, unless the employer contracts out of these arrangements with their employees by providing a savings scheme or pension scheme.

DATA PRIVACY

There are no clear laws in Oman comparable to those in the US or Europe concerning the handling and transmission of employees' personal information. However, the Electronic Transactions Law, RD 69/2008 (ETL) provides for the protection of personal data and regulates the transfer of personal data outside of Oman.

The Cyber Crime Law, Royal Decree no. 12 /2011 (Cybercrime Law) provides that it is an offense to violate the privacy of individuals through technology and prohibits the collection of private data.

It is advisable to seek prior written consent from employees to the processing of their personal data to the extent necessary to overcome the various privacy protections set out in the applicable civil and criminal laws.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS
Omani employees automatically transfer to the purchaser; however, expatriate employees do not.

EMPLOYEE REPRESENTATION

Permitted under the Labor Law.

TERMINATION

Grounds

Termination possible on the following grounds: by agreement, on the expiry of a fixed-term contract or completion of the specific project, resignation, incapacity or death, dismissal with notice provided it is for a valid reason or summary dismissal by reason of any of the grounds listed at Article 40 of the Labor Law.

Employees subject to termination laws

All employees.

Prohibited or restricted terminations

Employees who have not exhausted statutory sick leave or who are on public holiday. In such instances, any notice of termination will not be effective until the leave of absence has ended.

It is also not permissible to dismiss a female employee by reason of illness which is proven by a medical certificate to have resulted from pregnancy or delivery (and where she cannot resume work because of such illness), provided that the total period of absence is not more than 6 months.

Third-party approval for termination/termination documents

None required.

Mass layoff rules

None.

Notice

30 days' statutory notice.

Statutory right to pay in lieu of notice or garden leave

No. Depends on contract terms.

Severance

Unless terminated under Article 40 of the Labor Law, employees are entitled to salary and benefits to the termination date; notice (or payment in lieu); payment in lieu of accrued but untaken annual leave; the cost of an airline ticket to repatriate the employee to their home country (unless the dismissal is attributable to the
employee and the employee has the funds to pay their own costs or the employee has obtained alternative sponsorship to remain in Oman); an end-of-service gratuity payment; and reimbursement of unpaid business expenses.

In case of termination by the employer, the end-of-service gratuity is calculated based on the employee's final salary. An employee is entitled to 15 days’ pay for the first 3 years of service and 1 month's pay for each subsequent year.

**POST-TERMINATION RESTRAINTS**

It is permissible to have restrictive covenants contained in the contract of employment, provided that:

- The employee has become acquainted with the employer’s clients or the secrets of the business and
- The covenants are reasonably drafted in relation to their duration, geographic scope and the nature of the business to be protected.

Parties are permitted to include a liquidated damages clause in the contract of employment as it is not possible to obtain an injunction in Oman.

Article 661 of Royal Decree No. 29/2013 issuing the Civil Transactions Law of Oman (CTL) states that:

- If the work of the employee is such that they are permitted to have access to work secrets or to make acquaintance with the customers of the business, both parties can agree that the employee may not compete with the employer or engage in an employment which competes with it after the termination of the contract. However, such agreement shall not be valid unless it is:
  - Limited in time
  - Restricted as to place and
  - Specific as to the type of work the employee can undertake, all as necessary to protect the lawful interests of the employer.

- It shall not be permissible for the employer to rely on a non-compete agreement if the employer terminates the contract without justification (ie, if there is no action on the part of the employee justifying termination), and likewise it shall not be permissible for the employer to rely on the non-compete agreement if it commits any act which justifies the employee's resignation in response (ie, if the employer's action justifies the employee terminating the contract).

**Non-competes**

Typically no longer than 6 to 12 months.

**Customer non-solicits**

Typically no longer than 12 to 24 months.
Employee non-solicits

Permissible. Typically no longer than 12 to 24 months.

WAIVERS

Waiver agreements are commonly used, but their enforceability has not been tested by the courts.

REMEDIES

Discrimination

Not applicable.

Arbitrary dismissal

For arbitrary dismissal claims, the courts may order reinstatement (although this is uncommon in practice) or compensation of no less than 3 months’ pay.

Failure to inform & consult

Not applicable.

CRIMINAL SANCTIONS

Criminal sanctions may be imposed for a variety of reasons, including but not limited to breach of health and safety obligations, breach of immigration laws, breach of data protection laws and breach of confidentiality.
**PERU**

**LEGAL SYSTEM, CURRENCY, LANGUAGE**

Civil law. The official currency is the Sol (PEN). The official language is Spanish.

**CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP**

Corporate Presence Requirements

A foreign entity may directly engage employees in Peru without setting up a branch or subsidiary, subject certain business and tax considerations. Because of this, to engage employees in Peru, it is strongly recommended to set up a local entity or branch and register with the local tax authorities.

Payroll Set-Up

Proper payroll registrations are required. Payroll must be registered by an employer using the Tax Authority’s (SUNAT) webpage. Employers must pay social security contributions amounting to 9 percent. Employees must contribute approximately 12 percent of their salary to the social security system which is withheld by the employer. Income tax is also withheld by the employer from employees’ salaries, based on a progressive scale with a maximum rate of 30 percent.

**PRE-HIRE CHECKS**

**Recommended**

Generally speaking, there are no mandatory pre-hire checks, but immigration checks are highly recommended for foreign employees to ensure that the employee has the right to work legally in Peru.

**Required**

Specific companies that perform high-risk activities (eg, in the mining industry) must perform occupational medical exams on their candidates.

**Permissible**
In general, employers are permitted to check candidates’ education and prior employment history. Employers may also conduct (i) financial checks for jobs that involve handling money; (ii) drug or alcohol usage checks, but only if the individual has a job where use of drugs could threaten the safety of others; and (iii) a criminal record affidavit for candidates and criminal records checks after the first interview.

**IMMIGRATION**

The hiring of foreign citizens is subject to special rules:

a. Restrictions: The number of foreign employees cannot exceed 20 percent of a company’s total employee headcount in Peru. In addition, the maximum aggregate salary for all foreign employees cannot exceed 30 percent of the Peruvian company’s total payroll.

However, in limited cases (e.g., when a manager is hired for a new company), employees may apply to be exempt from the above limits on hiring and salary.

In addition, the above restrictions limits on hiring and salary do not apply to some foreign citizens who are not considered “aliens” for employment purposes – for instance, if such foreign citizens (i) are married to a Peruvian; (ii) have Peruvian ascendants, descendants or siblings; (iii) have an immigrant visa; or (iv) are nationals of countries which have signed a treaty with Peru about employment reciprocity or dual nationality. In these specific cases, in addition to the above restrictions not applying, their contracts of employment do not have to be approved by the Labor Ministry (see requirement c. below).

b. Written contract: Hiring foreign employees requires a written and fixed-term contract, which cannot exceed a 3-year period. If the parties agree, the contract may be extended for an equivalent period. The number of extensions depends on each individual.

c. Labor Ministry approval and work permit: Employment contracts with foreign citizens must be submitted to and approved by the Labor Ministry. After such approval, foreign citizens are able to obtain a worker visa and are permitted to start working in Peru.

**HIRING OPTIONS**

Employment contracts

Indefinite, fixed-term or part-time.

Independent contractor

Independent contractors may be engaged, subject to potential misclassification exposure.

To mitigate the misclassification risk, the services must be provided independently without direction or control from the hiring company.

The main characteristics of independent contractor relationships in Peru are as follows:
• Contractors are autonomous and independent in the provision of their services

• No requirement to comply with working hours

• Non-exclusive services (ie, contractors usually have several clients)

• Contractors receive compensation or a fee for their services (rather than a monthly salary, as employees do) and are not entitled to any employment benefits, and

• The arrangement is subject to the civil law (not employment law).

Staffing and outsourcing services

It is permissible to engage workers through a third-party staffing agency. However, agency workers may be hired only for activities that are different from the company’s core business. Moreover, the staffing agency must comply with certain legal requirements (eg, registration with the Labor Ministry). This arrangement is commonly used for janitorial and security services.

It is also permissible to engage workers through outsourcing arrangements with an outsourcing company. Workers assigned to perform services for a company are employed by third-party companies that provide outsourced business solutions or specialist consulting services on a contract (services) basis. The workers are managed, instructed and controlled solely by the outside third party, and such third party has its own financial, technical, material and human resources. The workers are subject exclusively to the orders and policies of the third-party company.

Both staffing and outsourcing arrangements have joint employer risks.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

There are 2 main types of employment contracts: (i) indefinite and (ii) fixed-term:

1. Indefinite employment contract: There is no legal requirement to execute indefinite employment contracts in writing, but the recommended approach is to sign a written agreement. Under local law, every employment relationship is presumed to be permanent for an indefinite term, unless proven otherwise.

2. Fixed-term employment contract: Despite the presumption that every employment relationship is permanent for an indefinite term, employees may be hired by means of fixed-term contracts in the following cases: (i) for new activities or services, market necessities or where there is an increase in production or demand; (ii) temporary or force majeure cases (eg, natural disasters or replacement of employees who are out on leave for such reasons as maternity, sabbatical or vacation); (iii) seasonal services (eg, fishing); or (iv) specific services where the fixed-term arrangement is permitted by the local law (eg, an audit of financial statements in a given year). Fixed-term employment contracts must be executed in writing. In some specific cases, fixed-term agreements may be extended for a maximum of 5 years.

It is also possible to hire an employee under a part-time employment contract, which may be indefinite or for a
fixed term, if the employee works less than 24 hours per week. This contract must be registered with the Labor Ministry.

Probationary periods

Generally, the maximum permitted duration of a probationary period is 3 months. The probationary period may be extended for up to 6 months for so-called “trusted personnel” (defined below) or when the employee must be trained first. Where an employee is “managerial personnel” (defined below), the probationary period may be extended for up to 1 year.

According to local law, “trusted personnel” means (i) any employee who reports directly to managers or (ii) employees who have access to industrial, commercial or professional secrets and confidential information. “Managerial personnel” means any employee who represents the employer in front of other employees and/or third parties or has managing and control functions.

Protection against arbitrary dismissal applies after the probationary period expires – meaning that companies may terminate the employment contract of a non-probationary employee only when having justified cause and after providing prior written notice pursuant to local law.

Policies

Policies that are mandatory for all companies irrespective of the number of employees are:

- Policy on Prevention and Punishment of Sexual Harassment
- Policy about Health and Safety at Work and
- Policy about the structure of the job roles and salaries of the company, in order to avoid any salary discrimination between men and women.

For companies with 20 or more employees, employers must implement:

- Internal Regulations on Health and Safety at Work.

For companies with 20 or more female employees of childbearing age, employers must implement:

- Rules on breastfeeding room in workplace

For companies with more than 100 employees, employers must implement:

- Internal Labor Regulations, which must be approved by the Labor Administrative Authority.

Third-party approval

Part-time employment contracts and home-working (ie, telework) contracts must be registered with the Labor Ministry.

An employment contract with a foreign citizen must also be approved by the Labor Ministry.
LANGUAGE REQUIREMENTS

The official language is Spanish. Any employment-related document (eg, employment agreement or contract) must be in Spanish to be valid. If the employment-related document is in a foreign language, in case of a dispute, such document must be translated by an official accredited translator.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All. Part-time employees must receive the proportional part.

Working hours

The employer has the right to set working hours. Employees are allowed to work a maximum of 8 hours per day and 48 hours per week. Some employees are legally exempt from these limits.

Employees who work continuously are entitled to take at least a 45-minute lunch break. This period is not part of the working hours, unless agreed otherwise.

Employees must have a day of weekly rest, usually on Sundays.

Overtime

Any additional working hours over regular working time or hours over agreed hours are considered overtime. Overtime is paid at a rate of 1.25 for each of the first 2 hours and at 1.35 for each additional hour per day. Alternatively, the company and the employee may agree to compensate overtime work with rest time.

Wages

Employees who work full-time are entitled to receive the minimum wage, which is currently PEN930 per month (about USD282). For certain activities, the minimum salary is higher (eg, mining). If the employee works on night shifts (from 10:00pm to 6:00am), they should receive a salary increase equivalent to 35 percent of the minimum wage.

Vacation

Employees working a minimum of 4 hours per day and who have accomplished a minimum number of days worked within the year – which depends on the duration of the working week – are entitled to 30 calendar days of vacation per full year of service. The number of days may be reduced in writing to a minimum of 15 calendar days, but the employer must compensate for the additional vacation days with an additional payment to the employee.

The employee may request in writing to split the 30 vacation days into 15 calendar days, which must be used in periods of 7 and 8 consecutive days; the remaining 15 calendar days may be used in periods of between 1 and 7 calendar days.

Sick leave & pay
Employees are entitled to up to 20 days’ sick leave per year fully compensated by the company if they have the proper medical certificate. After the 20th day, the Public Health Insurance (EsSalud) pays the employee a sickness allowance equal to the amount of the employee’s salary.

**Maternity/parental leave & pay**

Maternity leave: A female employee is entitled to 49 days paid leave prior to giving birth and 49 days of paid leave postpartum.

It is possible for the employee to postpone the leave prior to giving birth and use the accrued days postpartum. In such cases, the employee must notify the employer within 2 months before the expected birthdate and prove with a medical report that postponing the leave prior to giving birth will not prejudice the employee or the child.

Paternity leave: An employee who becomes a father is entitled to up to 10 consecutive working days of paid leave.

The 10-day period may start between the birthdate of the new child and the date when the mother and the child leave the hospital.

To enjoy this benefit, the employee must notify the employer within 15 days before the expected date of birth.

**DISCRIMINATION**

The Peruvian Constitution prohibits discrimination based on racial, sexual, political or religious grounds, or age or physical disability, among others.

The labor law forbids discrimination in recruitment.

Companies cannot dismiss based on discriminatory reasons. In such case, the dismissal is considered null, and the employee can sue for re-instatement.

During the employment relationship, if the company carries out discriminatory acts, this may be considered to be “hostility” against the employee. If the company continues with such discrimination, the employee may claim constructive dismissal due to discrimination.

Recently, local law has prohibited salary discrimination between men and women.

**BENEFITS & PENSIONS**

Family allowance: Employees who have children under 18 years old, or older than 18 years old and younger than 24 years old who are attending college/university or other similar educational institutions, are entitled to an additional monthly allowance payment of 10 percent of the minimum wage.

This is a single monthly allowance payment, regardless of the number of children.

Compensation for time of service: Every May and November, employers must deposit a compensation for time of service (CTS) into a special banking account in the employee’s name for all employees who work at least 4 hours per day and have a month of effective service with the company. The amount is approximately 1 month’s salary.
per year, though it must be calculated on the basis of the ordinary salary and all the amounts regularly paid to the employee either in cash or in kind (eg, Family Allowance). This is intended to serve as an unemployment insurance scheme for employees.

Legal bonuses: Employees are entitled to a legal bonus twice a year, during the first 2 weeks of July and December, respectively. Each bonus is equal to 1 month’s salary. Employees who are not actively employees in July or December, but have worked at least 1 month in the respective period, are entitled to receive the legal bonus pro-rated to the number of months worked.

Profit sharing: Companies with more than 20 employees must distribute part of the profits earned during the respective year to their employees. The distribution percentage depends on the company’s activities: (i) 10 percent of profits for fishing, telecommunication and manufacturing companies; (ii) 8 percent for mining, commercial companies and restaurants; and (iii) 5 percent for companies that do not fall into the first 2 categories.

The distribution of profits among the employees is made depending upon their effective working days and in proportion to the salary of each employee. The sum awarded to any individual employee may not exceed the equivalent of 18 monthly salaries. Any excess is placed in a special governmental fund.

Pension system: There are 2 systems that an employee may choose from in order to obtain pension. One is a public system; the other is a private system.

Contributions to the public system are equivalent to 13 percent of an employee’s salary. In the private system, the contribution is approximately 12 percent, but it varies depending on the pension fund, the month and the type of commission chosen by the employee.

The contribution is paid by the employee, and the employer must withhold the percentage from the employee’s salary.

Public health insurance – EsSalud: The employer must pay to EsSalud a contribution of 9 percent of the salary to cover health benefits of each employee.

DATA PRIVACY

During the employment relationship, companies collect employee personal data. The processing of personal data must be done in accordance with the guiding principles provided by the law.

According to the Peruvian Data Protection Law, consent and privacy notices must be obtained/given before the personal data is obtained/processed. Pursuant to the law, personal data may only be processed and/or transferred with prior consent. Such consent must be free, informed, express and unequivocal. However, a company does not need the express consent of the employee to obtain personal data if this information is necessary for the operation of the employment relationship, but it must comply with the duty of inform about the processing of personal data.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Any corporate reorganization, business purchase, downsizing or any similar matter:
Is not a valid cause for individual termination and

Should not affect the salary and conditions of the employees involved, unless there is prior written agreement with the employees.

In case of a merger, the change of employer occurs automatically due to the method of transfer, so employee consent is not needed. The employment continues with the surviving company on existing terms. If the surviving company wants to change the existing terms, it must obtain consent in writing from each employee with respect to these new terms.

EMPLOYEE REPRESENTATION

Trade unions are prevalent in certain sectors (eg, manufacturing, mining and infrastructure). Unions are protected under the Peruvian Constitution, which recognizes the right of an employee to join unions, collective bargaining and strikes. Union leaders are specially protected against unfair dismissal.

TERMINATION

Grounds

After the probationary period, employees are protected against arbitrary dismissal (ie, dismissal without legal cause or procedure), which means that companies may terminate the employee only with justified cause, after providing prior written notice pursuant to law.

Both employee misconduct – including serious misconduct – and the incapacity of the employee may be considered as a ground for termination. However, in practice, some causes of dismissal (eg, poor performance) are difficult to apply.

The following are considered acts of serious misconduct:

- Non-compliance with working obligations
- Use or delivery to third parties of confidential information belonging to the employer
- Unfair competition
- Repeated attendance at work under the influence of alcohol, drugs or narcotics
- Violence, serious lack of discipline, perjury or verbal or written statements made to the detriment of the employer
- Intentional damage to the facility, work, equipment and other property belonging to or in the possession of the employer
- Unjustified absence from work for more than 3 consecutive days, 5 days within a period of 30 days, or 15 days during a period of 180 calendar days, and
• Sexual harassment.

The following causes are related to an employee’s incapacity:

• Decrease in performance either based on the capability of the employee or based on an average of their previous performance in similar conditions and

• Unjustified refusal to undergo a medical examination – mandatory or agreed – which is necessary for work, or to comply with medical treatment.

**Who is subject to termination laws?**

Full-time employees. Part-time employees do not have protection against unfair dismissal. However, employers must still comply with the general requirements to terminate part-time employees.

**Restricted or prohibited terminations**

Unfair dismissal is forbidden by law.

A dismissal will be null and the employee will be entitled to claim re-instatement if the dismissal is based on any of the following causes: pregnancy, maternity leave, breastfeeding, making a complaint against the employer, racial origin, sex, religion, political opinion or trade union membership.

**Third-party approval for termination/termination documents**

No requirements.

**Mass layoff rules**

When a layoff is based on economic, operational or structural reasons, an employer must dismiss a minimum of 10 percent of its employees. In these cases, the employer must hold a period of consultation and negotiation with the union or in the absence of a union, with the affected employees. A mass layoff must also be approved by the Labor Administrative Authority.

Where closing operations in Peru, an employer must provide prior written notice by letter communicating the termination of employment to its employees and then to the Labor Administrative Authority.

**Notice**

The company must provide prior written notice by letter communicating its intention to terminate the employee and in which the employer must describe the facts and any applicable misconduct that justifies the dismissal. Such notice must indicate the ground for the dismissal and provide the employee with at least 6 calendar days to reply, or 30 days if the cause is related to incapacity. After that notice period, whether or not the employee responds, the company may issue a termination letter.

**Statutory right to pay in lieu of notice or garden leave**

Pay in lieu of notice is not permitted. Garden leave is permitted.
Severance

There is no statutory severance entitlement, but an indemnity is payable in the event of an unfair dismissal (i.e., where the company does not have a prescribed legal ground to dismiss employees). In the event of unfair dismissal, employees are entitled to receive a legal indemnity in the amount of:

- 1.5 times their monthly remuneration for each year of service, if the employee is on an indefinite employment contract. Periods of time less than 1 year must be paid proportionally.

- 1.5 times their monthly remuneration for each month remaining until the end of the fixed-term contract, if applicable.

Such indemnity may not exceed, in both cases, 12 monthly salaries.

**POST-TERMINATION RESTRAINTS**

Subject to comments below, it is common in Peru for companies to include or negotiate non-compete, non-solicitation and non-poaching clauses to prevent employees from competing with the employer after termination. Further, post-termination confidentiality obligations are included in termination agreements.

**Non-competes**

Post-termination non-compete obligations are not enforceable under Peruvian law. However, in practice, employers include them in termination agreements and/or employment agreements for a potential deterrent effect on employees. To ensure that the employee complies with the non-compete, some companies pay compensation after successful completion of the non-compete period.

**Customer non-solicits**

Customer non-solicits are generally permissible. Peruvian law classifies as “sabotage” any actual or potential action which would, without cause, damage the business activity of another economic entity by means of interfering in the relationship with its employees, clients and other individuals, in order to induce the latter not to fulfill any obligation.

**Employee non-solicits**

Employee non-solicits are generally permissible. As indicated in the previous paragraph, solicitation of employees amounts to “sabotage.”

**WAIVERS**

Any executed agreement that reduces rights granted by the Constitution, labor laws related to specific industries, collective agreements or individual employment contracts, either at the time of their agreement or execution, or the exercise of the rights arising from its termination, shall be null and void.

Nonetheless, it is possible enter into a valid settlement agreement with a release. When entering into such agreements, the employee’s signature must be notarized by public notary.
REMEDIES

Discrimination

In case of a dismissal for discrimination, the employee is entitled to claim re-instatement to the company.

In the case of salary discrimination, the employee is entitled to sue for official confirmation of equality with their coworker.

Please see the discrimination section.

Unfair dismissal

In case of unfair dismissal, the employee may claim for re-instatement or for an indemnity. Employees who were classified as managers or “trusted personnel” since the commencement of their employment are not entitled to claim for re-instatement.

Failure to inform and consult

Not applicable for terminations as there are no consultation obligations.

CRIMINAL SANCTIONS

According to the Criminal Code, violation of employment laws and discrimination may trigger criminal sanctions in the following cases:

- Harassment, sexual harassment, sexual blackmail and the spreading of images, audiovisual or audio materials with sexual content
- Forced labor
- Forcing or preventing an employee from joining a union or
- Deliberate infringement of Health and Safety at Work regulations and endangering the lives, health or integrity of employees in a serious way.

COVID-19 SPECIAL REGULATIONS

Home office

The employer may instruct employees to work from home until December 2022. In case of employees at high risk of a COVID-19 infection, the employer must prioritize home office.

Furlough

If the employer cannot maintain its workforce because its financial situation has been affected by the COVID-19 crisis and/or can’t apply the home office, it is possible to furlough employees. The application must be approved by
the Labor Administrative Authority. The furlough may last until April 5, 2021, at most.

**COVID-19 Health and Safety Plan**

Peru is under lockdown measures as of March 16, 2020. The economic reactivation process started in May of 2020 and consists of 4 stages. If the employer’s activities are allowed, according to such reactivation process, it is necessary to elaborate and register a COVID-19 Health and Safety Plan prior the restarting of operations after quarantine.

**Vaccination**

Employees who perform work activities in person must prove that they have been fully vaccinated against COVID-19. In case of non-compliance, the employer can require the employee to work from home. If this is not possible, employers may furlough employees unless agreed otherwise.

An employee who vaccinates against COVID-19 is entitled to up to 4 hours days of paid leave. To enjoy this benefit, the employee must notify the employer within 48 hours before the day of vaccination.

As of January 31, 2022, individuals 40 and older must demonstrate that they have received their third vaccine dose against COVID-19 in order to enter to closed places, such as offices, shops, restaurants, supermarkets and clubs, among others.
PHILIPPINES

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. The official currency is the Philippine Peso (PHP). The official languages are English and Filipino.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign company cannot directly engage employees in the Philippines unless it establishes a subsidiary or branch in the Philippines. Corporate employers are required to be registered with the Securities and Exchange Commission for corporations and partnerships, the Department of Trade and Industry for single proprietorships and the Philippine Social Security System (or SSS; Republic Act No. 8282, Social Security Act of 1997), PhilHealth (Republic Act 7875 National Health Insurance Act of 1995, as amended by Republic Act 9241), Pag-ibig (Republic Act 9679, Home Development Fund Law of 2009), and the Bureau of Internal Revenue (BIR) for the withholding of income taxes and national insurance contributions.

PRE-HIRE CHECKS

Required

There are no regulatory requirements for pre-hire, subject to compliance with immigration laws for employment of foreign expatriates.

Permissible

Philippine labor law leaves it to the management prerogative of employers to provide for pre-hire checks, including but not limited to a National Statistics Office (NSO)-issued birth certificate, a National Bureau of Investigation (NBI) clearance, a transcript of records for educational verification and previous employer references.

IMMIGRATION

Philippine law allows employers to engage a foreigner to work in the Philippines, provided an employment permit
is first secured from the Department of Labor and Employment. An employment permit may be issued after a determination of unavailability of a person in the Philippines who is competent, able and willing at the time of the application to perform the services for which the foreigner is desired. After issuance of a work permit, the foreign expatriate must also secure a working visa from the Bureau of Immigration.

**HIRING OPTIONS**

**Employee**

A regular employee is one who has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer or who has rendered at least 1 year of service, whether such service is continuous or interrupted, with respect to the activity in which they are employed.

If the employment does not fall within the nature of a regular employment, employment may be project, seasonal, casual or fixed-term.

**Independent contractor**

An independent contractor is one who carries on a distinct and independent business and undertakes to perform the job on their own account and under their own responsibility, according to their own manner and method, and free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof. The contractor must likewise have substantial capital or investment in tools, equipment and machineries, work premises and other materials necessary in the conduct of their business.

**Agency worker**

The law prohibits labor-only arrangements (ie, a relationship where the agency refers employees and the principal merely pays the agency or contractor the salaries of the employees). In a labor-only arrangement, the principal is jointly liable with the agency for any labor claims. An outsourcing arrangement, where the agency directs and controls the employees, is lawful.

**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

Optional. The parties are free to agree to the terms of the employment contracts, provided these are not contrary to law, morals, good customs, public order or public policy.

**Probationary periods**

The probationary period may not exceed 6 months from the date the employee started working. An employee must be informed of the standards of regularization at the time of engagement. An employee becomes a regular employee upon completion of the 6 months’ probationary period if the employee is not terminated from employment due to failing the performance standards before the end of the probationary period.

**Policies**
A health and safety statement, a disciplinary procedure, data protection policy and an anti-sexual harassment procedure are mandatory. Highly recommended policies include policies on a grievance procedure, non-competition and an IT/electronic communication policy. It is common for employers to issue an employee handbook.

**Third-party approval**

Except for employment of foreign nationals, no requirement to lodge employment contract or policies with, or get approval from, any third party.

**LANGUAGE REQUIREMENTS**

No statutory requirements. English is acceptable.

**MINIMUM EMPLOYMENT RIGHTS**

**Employees entitled to minimum employment rights**

All employees.

**Working hours**

The total number of working hours must not exceed 8 hours daily. Normal workdays per week are 6 days.

A Compressed Work Week (CWW) scheme is recognized by law where the normal work week is reduced to 5 days, but the total work hours remain at 48 hours. Hours for a normal work day are not more than 12 hours, without the corresponding overtime pay. However, this scheme must be voluntarily agreed to by both the employer and the employees.

Employees are entitled to a 1-hour meal break, which is not compensated. It is the duty of the employer to provide each of its employees a rest period of not less than 24 consecutive hours after every 6 consecutive normal work days. If an employee is required to work on their rest day, the employee shall be entitled to an additional pay of 30 percent regular hourly pay.

**Overtime**

Any work in excess of 8 hours in a day is considered overtime work.

**Wages**

Basic wage means all the remuneration or earnings paid by an employer to a worker for services rendered on normal working days and hours excluding cost-of-living allowances, profit-sharing payments, premium payments, 13th-month pay or other monetary benefits which are not considered part of or integrated into the regular salary of workers. Wages must first comply with the minimum wage rates prescribed by Philippine law on a regional basis.

**Vacation**
Entitlement to a 5-day leave with pay for every employee who has rendered at least 1 year of service, known as Service Incentive Leave (SIL). At the employee's choice, SIL is commutable to its money equivalent if not used or exhausted at the end of the year based on the salary rate at the date of commutation.

**Sick leave & pay**

There is no minimum required by law apart from the SIL.

**Maternity/parental leave & pay**

**Maternity leave**

A female employee who has paid at least 3 monthly contributions to the Social Security System (SSS) in the 12-month period immediately preceding the semester of her childbirth, miscarriage or emergency termination of pregnancy shall be paid a daily maternity benefit computed based on her average monthly salary credit for 105 days regardless of whether she gave birth via caesarean section or natural delivery.

**Paternity leave**

A married male employee is permitted not to report for work for 7 days but to continue to earn his gross monthly compensation on the condition that his spouse has delivered a child or suffered a miscarriage for the purpose of lending support to his partner during her period of recovery and/or in nursing of the newly born child.

**Parental leave or solo parent leave**

A solo parent employee who has rendered service of at least 1 year is entitled to a parental leave or solo parental leave of not more than 7 working days every year.

**Leave for victims of violence against women and children**

An employee who is a victim of violence (i.e., physical, sexual or psychological) is entitled to a paid leave of up to 10 days.

**Special leave benefit for women**

A female employee is entitled to 2 months with full pay from her employer based on her gross monthly compensation following surgery caused by gynecological disorders, provided that she has rendered continuous aggregate employment service of at least 6 months over the last 12 months.

**DISCRIMINATION**

**Against women**

It is unlawful for an employer to discriminate against any woman employee with respect to terms and conditions of employment solely on account of her sex. (*Labor Code of the Philippines, Art. 135*)

The Labor Code of the Philippines likewise considers it unlawful for an employer to require, as a condition for or continuation of employment, a woman employee to not get married or to stipulate expressly or tacitly that, upon
marriage, a woman employee shall be deemed resigned or separated. (*Labor Code of the Philippines, Art. 136*)

Sexual harassment is also prohibited. (*Anti-Sexual Harassment Act of 1995*)

**Against persons with disability**

No persons with disabilities shall be denied access to opportunities for suitable employment. A qualified employee with disabilities shall be subject to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits, incentives or allowances as a qualified able-bodied person. (*Republic Act No. 2010911*)

**Based on age**

It is unlawful for an employer to do any of the following:

- Print or publish, or cause to be printed or published, in any form of media, any notice of advertisement relating to employment suggesting preferences, limitations, specifications and discrimination based on age
- Require the declaration of age or birthdate during the application process
- Decline any employment application because of the individual's age
- Discriminate against an individual in terms of compensation, terms and conditions or privileges of employment on account of age
- Deny promotion or opportunity for training because of age
- Forcibly lay off an employee or worker because of old age
- Impose early retirement on the basis of age (*Section 5 (a) of Republic Act No. 10911*)

**BENEFITS & PENSIONS**

**13th month pay**

Payment of 13th-month pay equivalent to 1/12 of the basic salary of an employee within a calendar year on or before the December 24 of every year is mandatory.

**Separation pay**

Separation pay is payable as

- The employer's statutory obligation in cases of legal termination due to authorized causes under Articles 297 or 298 of the Labor Code of the Philippines
- Financial assistance as an act of social justice
- In lieu of re-instatement in illegal dismissal cases where the employee is ordered to be re-instated but
re-instatement is not feasible or

- As an employment benefit granted in a collective bargaining agreement or company policy

**Retirement pay**

An employee, upon reaching the age of 60 years or more, but not beyond 65 years which is hereby declared the compulsory retirement age, who has served at least 5 years in the establishment is entitled to a retirement pay equivalent to at least 1/2 month salary for every year of service, a fraction thereof of at least 6 months being considered a whole year.

**DATA PRIVACY**

When an employer collects and processes personal information of its employees, especially sensitive personal information, the employer must comply with applicable guidelines on the adoption of organizational, physical and technical security measures and the registration thereof with the National Privacy Commission. The data subject must have given their consent prior to the collection, or as soon as practicable and reasonable. An employer's collection of personal information from its own employees does not require the employee's prior written consent, provided the personal information collected and the processes applied to such information are only to the extent necessary for compliance with legal requirements prescribed for an employer-employee relationship.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

In a share deal, employment continues.

In an asset deal, the parties may agree to assume the employment agreements, which requires employee consent. Alternatively, employees may be terminated and rehired, which would result in the seller being liable for separation pay of 1 month per year of service or at least 1 month’s pay, whichever is higher.

**EMPLOYEE REPRESENTATION**

It is the right of the employees to form, join or assist in the formation of a labor organization of their own choosing for purposes of collective bargaining through representatives of their own choosing and to engage in lawful concerted activities for purposes of collective bargaining, or for their mutual aid and protection.

Apart from unions, there are no works councils or other collective groups.

**TERMINATION**

**Grounds**

Employees may only be terminated either for just or authorized causes as enumerated in the Labor Code. The burden of proof is with the employer or the employer will be liable for re-instatement with back pay.

The following are the just causes for the termination of employment by the employer:
- Serious misconduct or willful disobedience by an employee of the lawful order of their employer or representative in connection with their work

- Gross and habitual neglect of duties by an employee

- Fraud or willful breach by an employee of trust reposed in them by the employer or its duly authorized representative

- Commission of a crime or offense by an employee against the person of their employer or any immediate member of their family or their duly authorized representative

- Other causes analogous to the foregoing

The following are the authorized causes of termination:

- Installation of a labor-saving device or automation

- Redundancy

- Retrenchment (ie, downsizing)

- Closure or cessation of operation of the establishment or undertaking

Employees subject to termination laws

All employees, with no distinction as to rank or status.

Prohibited or restricted terminations

Substantive due process mandates that an employee can only be dismissed based on just or authorized causes. On the other hand, procedural due process requires further that the employee can only be dismissed after the employee has been given an opportunity to be heard.

Further, pregnancy or number of children shall not be a ground for termination from employment. (Republic Act No. 10354)

Third-party approval for termination/termination documents

Not required.

Mass layoff rules

There are no specific mass layoff rules. Layoff, used interchangeably with retrenchment or redundancy, is a valid ground for termination if the following are present:

- Retrenchment is reasonably necessary and likely to prevent business losses

- Losses, if already incurred, are not merely de minimis, but substantial, serious, actual and real, or if only
expected, are reasonably imminent

- Expected or actual losses is proven by sufficient and convincing evidence

- Retrenchment is in good faith for the advancement of its interest and not to defeat or circumvent employees’ right to security of tenure

- For redundancy, business must show that employees are in excess given current business situation of a company

- For both redundancy and retrenchment, there must be fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age and financial hardship for certain workers

Notice

For termination based on just cause, there is no statutory advance notice period; for termination based on authorized causes, there is a statutory notice period to both the employee and the Department of Labor and Employment of at least 30 days prior to termination.

In addition, for termination of employment based on just cause, the procedure to be followed is as follows:

- A first written notice must be served on an employee specifying the ground for termination, a detailed narration of facts and circumstances that will serve as basis for the charge against the employee, and a directive that the employee is given opportunity to submit a written explanation within a reasonable period

- A hearing or conference during which an employee is given ample opportunity to be heard and to defend themselves with the assistance of the employee's representative if desired

- A 2nd written notice served to the employee indicating that
  - All circumstances involving the charge against an employee have been considered and
  - The grounds have been established to justify the severance of their employment

- For termination of employment based on authorized causes, requirements of due process are deemed complied with upon the service of a written notice to the employee and the appropriate Regional Office of the Department of Labor and Employment at least 30 days before the effective date of the termination, specifying the ground or grounds for termination

Statutory right to pay in lieu of notice or garden leave

Not provided for under Philippines law.

Severance

Separation pay is equivalent to at least 1 month’s pay or at least 1 month’s pay for every year of service, whichever is higher – a fraction of 6 months considered 1 year. However, if the ground for termination is retrenchment to
prevent serious losses, closure of business or disease, the separation pay shall be equivalent to 1 month’s pay or 1/2 month's pay for every year of service, whichever is higher – a fraction of 6 months considered 1 year.

**POST-TERMINATION RESTRAINTS**

An employer, in the exercise of its management prerogative, may insist on an agreement with an employee for certain prohibitions to take effect after the termination of the employer-employee relationship.

**Non-competes**

The employer and employee are free to stipulate in an employment contract prohibiting the employee within a certain period from and after termination of their employment from

- Starting a similar business, profession or trade or
- Working in an entity that is engaged in a similar business that might compete with the employer. There must be a limitation as to time, place and trade. Courts have found a 2-year prohibition reasonable.

**Customer non-solicits**

A non-solicitation clause may be a stipulation agreed upon by the employer and employee in an employment contract.

**Employee non-solicits**

A non-recruitment or anti-piracy clause is a stipulation that may be agreed upon by the employer and employee in an employment contract.

**WAIVERS**

Waivers, release and quitclaims are valid and binding on the parties when the agreement is voluntarily entered into and represents a reasonable settlement.

**REMEDIES**

**Discrimination**

A complaint for violation on the prohibition against discrimination may be filed before the National Labor Relations Commission (NLRC) for damages and/or the Courts for penal sanctions.

**Unfair dismissal**

An employee may lodge a formal complaint before the NLRC on any claim for illegal dismissal specifically alleging and substantiating that the dismissal lacked any cause for termination or did not comply with due process as provided by the Labor Code.
Failure to inform & consult

In reference to employee termination proceedings, failure to comply with procedural due process of notice and hearing allows an employee to lodge a complaint for damages. If termination is deemed illegal because it was not based on just or authorized cause, the remedy is re-instatement with back pay.

CRIMINAL SANCTIONS

Criminal penalties may be imposed for violations of the Labor Code of the Philippines and relevant Special Laws as provided therein, such as but not limited to illegal recruitment, sexual harassment, child labor, non-remittance of SSS, PhilHealth and Pag-ibig contributions, and violations of collective bargaining agreements amounting to unfair labor practices.

KEY CONTACTS

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POLAND

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of the European Union (EU), so required to implement relevant EU directives. The official currency is the Polish zloty (PLN). The official language is Polish.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Entities based in the EU may engage employees in Poland without having to set up a local corporate presence, but they must set up payroll. Companies and individuals from outside the EU, as a rule, must set up a company in Poland in order to engage individuals in Poland under an employment contract (ie, a contract governed by the Polish Labor Code). However, a company from outside the EU may directly engage an independent contractor (ie, a person registered in the Polish CEIDG register as a self-employed person). Engagement without a local corporate presence is subject to permanent establishment tax exposure.

PRE-HIRE CHECKS

Required

Immigration compliance: requirement to obtain a work permit for foreigners originating from non-EU and non-European Economic Area (EEA) countries. A statutory list of so-called regulated activities to be performed only by persons holding specific licenses or possessing certain types of education and professional experience. Initial medical examinations to confirm that there are no health reasons barring the person’s employment in a certain position, although there are certain exceptions – for example, where a medical certificate was issued during a period of previous employment in the same position.

Permissible

Certain limited types of personal data may be requested from the candidate as specified by the Polish Labor Code and other applicable provisions. These include name and surname, date of birth, contact details, education, professional qualifications and work history. The employer may also request that a candidate provide personal data not listed in the Polish Labor Code; however, the processing of additional data requires the candidate’s consent. The employer may collect and process sensitive data such as data revealing racial or ethnic origin, political views,
religious or ideological beliefs, trade union membership, genetic data, biometric data to uniquely identify a person and data on health, sexuality or sexual orientation only if a candidate provides this at their own initiative. Information on criminal convictions may be requested only if the obligation to provide this information is required by separate statutory provisions.

**IMMIGRATION**

Free movement of employees from all countries of the EU and EEA as well as Switzerland. In general, citizens of other countries require a work permit and a work visa or other residence permit.

**HIRING OPTIONS**

**Employee**

Employment relationship under an open-ended employment contract, fixed-term employment contract and employment contract for a probationary period; part-time and full-time. It is unlawful to discriminate against employees on the basis of their working part time or working under a fixed-term contract.

**Independent contractor**

A person engaged under civil law agreement is not an employee in the meaning of the Polish labor law. Nevertheless, a contractor is deemed an employee, irrespective of the formal name of the contract between parties, if an individual is engaged under the other party’s supervision and subject to control of the place, hours of work and the manner of performance.

From January 1, 2021, entities concluding contracts for specific work (umowa o dzieło) are required to register them in the newly created register kept by the Social Insurance Institution (ZUS) within 7 days of the date of their conclusion. The registration obligation includes contracts concluded between persons that are not parties to an employment relationship.

**Agency worker**

Temporary work is widely used for short periods of employment in order to cover the absence of permanent employees or to perform seasonal works. Over a period of 36 successive months, a single user-employer may use the services of an individual provided by a work agency for a total period not exceeding 18 months.

**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

An employment contract must be concluded in writing; however, the validity of a contract of employment does not depend on the form.

Where a written form is required, it is possible to use an esignature instead of a wet signature. However, only a so-called “qualified electronic signature” (QES or kwaliﬁkowany podpis elektroniczny) can have the same legal effect as a wet signature.
An employment contract must include basic employment information such as:

- The parties to the employment contract
- The type of employment contract
- The concluding date of the employment contract
- The conditions of work and pay, including in particular the type of work (ie, job position), the place where work is performed, remuneration, amount of working time and the date when work commences

Provisions of employment contracts cannot be less favorable to an employee than the provisions of the Polish labor law or else they are null and void.

**Probationary periods**

An employment contract for a probationary period is a separate employment contract which may precede other types of employment contracts. A probationary period cannot be longer than 3 months. The aim of employment under this type of contract is to check the skills and qualifications of the employee and the possibility of employment for a specific type of work. As a rule, the employer may engage an employee for a trial period only once.

**Policies**

Statutory requirement to adopt workplace and remuneration regulations by employers engaging at least 50 employees not covered by a CBA. If a trade union operates in the workplace, it may request that an employer adopts workplace and/or remuneration regulations, provided that the employer has between 20 and 49 employees. The content of the workplace and remuneration regulations must be agreed with the trade unions (if operating at the entity).

Employers with at least 50 employees on the 1st day of each calendar year (ie, 50 full-time positions or their equivalent) are obliged to create a company social benefits fund to allocate money for financing the employer's social activities and adopt regulations on awarding benefits from this fund. If a trade union operates in a workplace, it may request that employer establish a fund, provided that employer has between 20 and 49 employees.

**Third-party approval**

No requirement to obtain a third party's approval.

**LANGUAGE REQUIREMENTS**

Statutory requirement to draft employment-related documents in Polish in order for them to be binding. Possibility to prepare these documents in a bilingual (eg, Polish-English) version; however, in the case of any discrepancies, the Polish version will prevail.

**MINIMUM EMPLOYMENT RIGHTS**
Employees entitled to minimum employment rights

All employees.

Working hours

Standard (ie, basic) working time may not exceed 8 hours per day and an average of 40 hours over an average 5 day working week within the adopted settlement period not exceeding 4 months. It is also possible for an employer to introduce a 12-month settlement period for each working time system it uses if this is justified by objective or technical reasons and the organization of working processes. Polish labor law additionally provides for other systems of working time where the daily and weekly standards are different from the basic working time system. The Polish Labor Code allows the introduction of "flexible working hours." An employer may specify different times for the working day to start or may allow the employee decide – within the confines of a period indicated by the employer – what time they begin work. An employee's weekly working time, together with overtime work, cannot exceed an average of 48 hours in a given settlement period. In general, an employee must be granted at least 11 hours of uninterrupted rest each day and 35 hours of uninterrupted rest per week. Work on Sundays and public holidays is permissible only in the cases enumerated in the Polish Labor Code.

Overtime

Statutory restrictions on the permissible number of hours of overtime work. An employer cannot instruct some groups of employees to work overtime (eg, pregnant employees).

The overtime work may be compensated by paying an allowance – in addition to a standard remuneration – in the amount specified by the Polish Labor Code (ie, 50 percent or 100 percent of remuneration) or granting time off from work.

Wages

Statutory minimum wage whose amount is established each year – for 2022, the minimum wage amounts to PLN3,010 and PLN19.70 per hour for individuals employed under a contract of mandate or a contract to provide services which are civil law agreements.

Vacation

Entitlement to 20 days of holiday leave. Entitlement to 26 days after 10 years of total years of service, which includes all previous employments and years of education, ending with graduation, specified under statutory law. Special rules apply to an employee beginning work for the first time. In addition, an employee is entitled to 13 public holidays.

Sick leave & pay

In general, for a total period of incapacity to work due to illness of 33 days (14 days in case of employees over 50 years of age) in a calendar year, an employee is entitled to sick pay from their employer in the amount of 80 percent of remuneration. Starting from the 34th (15th for employees over 50 years of age) day of incapacity to work, an employee is entitled to sickness benefit paid by the Social Insurance Institution (ZUS). If an employer employs at least 21 insured individuals on November 30 of a given calendar year, in the next calendar year, the
obligation to pay benefits rests with the employer. The sum of social insurance contributions to be paid is then reduced by the sum of the sickness benefits paid by the employer. In principle, sickness benefit amounts to 80 percent of the employee’s remuneration.

Maternity/parental leave & pay

Special protection against dismissal of pregnant employees and employees using maternity, paternity, parental or childcare leave.

Basic maternity leave for a female employee is 20 to 37 weeks, depending on the number of children born. An employee-father is entitled to 2 weeks of paternity leave, to be used before the child reaches 24 months. Employees may apply for 32 weeks’ parental leave – or 34 weeks in the case of a multiple births. This leave may be used by both parents at the same time and can be divided into no more than 4 parts.

The list of individuals entitled to take maternity or parental leave was extended in September 2019. Aside from parents (ie, adoptive or foster parents), employees who are immediate family members, such as a grandmother, grandfather, sister or brother, are now entitled to benefit from this leave. However, such immediate family members may only take this leave in specific situations (eg, where the mother’s maternity leave is disrupted by her being in hospital or where she is unable to take care of the child personally due to her own ill health). An employee engaged for at least 6 months is entitled to childcare leave of up to 36 months to be used before the child reaches 6 years of age. Each parent has the exclusive right to 1 month’s childcare leave; this right cannot be transferred. Childcare leave may be combined with employment or training by the current or another employer; parents may use the childcare leave at the same time and/or divide the leave in 5 parts. Alternatively, an employee may file a request to reduce their working time to no less than 1/2 of the full amount of working time within the time during which they could have benefited from such leave.

For the period of the maternity leave (basic and additional), the paternity leave and the parental leave, an employee is entitled to a maternity benefit paid by ZUS. In general, no benefits or salary are granted to an employee using childcare leave.

DISCRIMINATION

Any discrimination against employees is prohibited. Provisions of employment contracts that infringe upon the principle of equal treatment are null and void, and the statutory provisions apply instead. Where there are no appropriate regulations, the infringing provisions should be replaced with appropriate provisions.

BENEFITS & PENSIONS

The state social system provides for health insurance and pension coverage.

Moreover, employees may make their own individual pension arrangements (ie, the Individual Pension Account or IKE) with an investment fund, brokerage office, bank, insurance company or private pension fund as a voluntary, supplementary way to accumulate capital for their retirement.

Employers may also establish a private pension scheme for their employees. In contrast to the individual pension arrangements, the basic contribution to the private pension scheme is financed by the employer.
As part of the reform of the pension system, on January 1, 2019, the Polish government introduced a new form of saving into the Polish legal system: the Employee Capital Plan (PPK). PPKs allow the accumulation of additional funds for retirement, and participation is voluntary on an opt-out basis. Contributions to Employee Capital Plan are financed by the employer (i.e., 1.5 percent of the remuneration) and by the employee (i.e., 2 percent of the remuneration) with limited options to increase these amounts. The establishment of a PPK is associated with a number of additional obligations for the employer, including the necessity of selecting a financial institution to manage the PPK in a given employing establishment. The 4th and final phase of introducing PPKs began on January 1, 2021, when all employers and entities from the public sector in Poland – regardless of their number of employees – became obliged to create a PPK.

There is a unified retirement age of 60 for women and 65 for men.

**DATA PRIVACY**

An employer is obliged to respect its employees’ dignity and other personal rights, including their privacy and the confidentiality of the content of employees’ private correspondence. There are statutory rules which forbid the secret monitoring of employees, and there are specific rules to introduce camera monitoring and other forms of employee monitoring, including monitoring of software and the internet, among others.

The Polish Labor Code sets forth specific rules regarding collecting and processing personal data of the candidates and the employees and, in particular, lists the types of data that may be requested by the employer. In matters not regulated by the Labor Code, general rules on data protection provided for in the Act on the Protection of Personal Data and the General Data Protection Regulation (GDPR) apply.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

Automatic transfer of employees under the EU TUPE Directive and the Polish Labor Code. The transferor and the transferee are jointly and severally liable for the obligations resulting from the employment relationships that arose before the transfer of a part of an undertaking. They have certain information and consultation obligations towards the employees and the employees’ representatives (i.e., trade unions and works council). A transferred employee has the right to terminate their employment relationship within 2 months of the transfer date, without notice, providing 7 days’ prior notice. Termination according to this procedure has the same legal effect as if the employment relationship were terminated with notice by an employer. Dismissal solely due to transfer is unlawful. The transferee is obliged to apply any CBA adopted by the transferor and applicable to the transferred employees for a period of 1 year after the transfer date, unless the transferee applies more favorable conditions than those resulting from the CBA.

**EMPLOYEE REPRESENTATION**

Trade unions

A single-establishment trade union can be formed either as:

- A unit of a nationwide trade union or as

- A new, separate trade union organization, upon a resolution on its establishment, passed by at least 10
persons entitled to establish trade unions.

All employees and other individuals performing work (eg, civil law contractors) are entitled to form and join trade unions. Nobody may be discriminated against for being or not being a member of a trade union. Trade unions represent all individuals irrespective of their membership. In individual matters, trade unions solely represent the rights and interests of their members or of unassociated individuals upon their request. Employers have multiple, various obligations towards the trade unions operating at their entities. Trade unions are granted certain rights – in particular, trade union leaders enjoy special protection against dismissal.

Works council

Employees’ representative body, elected by the employees, may be established within a company that engages at least 50 employees, excluding state enterprises, mixed-capital entities engaging at least 50 employees and public institutions. The employer has an obligation to inform and consult with its works council in matters specified by law. Special protection against dismissal for works council members.

TERMINATION

An employment contract may be terminated by mutual agreement of the parties, with notice, with immediate effect (for cause or without any employee’s fault) or at the end of the period it has been concluded for (ie, fixed-term employment contracts and probationary period employment contracts).

Polish law sets forth detailed rules regarding the unilateral termination (with notice and with immediate effect) served by both an employer and an employee. These rules vary depending on the type of employment contract.

Grounds

An employer that terminates the open-ended employment contract or terminates the employment with immediate effect must specify the reasons for termination, which must be concrete, justified and real. A termination letter must include all the reasons for termination as it is not possible to raise further grounds before the court. In case of termination with immediate effect, Polish law enumerates the reasons for termination (eg, the gross breach of basic employee obligations).

Employees subject to termination laws

Polish law provides for general protection against dismissal, granted to all employees engaged under open-ended contracts, and special protection against termination due to the employee’s life situation or role they hold.

Prohibited or restricted terminations

Statutory limitations of an employer’s right to unilaterally terminate the employment relationship with some groups of employees due to their age (ie, employees who will reach retirement age in not more than 4 years), life situation (eg, pregnancy; when on maternity leave, paternity leave, parental leave, childcare leave, sick leave or holiday leave) or function they hold (eg, trade union leaders or works council members).

Third-party approval for termination/termination documents

In case of protected employees, restriction on termination may require the employer to seek consent of certain
bodies for the termination of employment (e.g., trade union’s consent for summary dismissal of a pregnant employee or terminating the employment relationship with a member of the trade union’s board, or consent of the works council for the termination of employment of its member).

In case of termination of an open-ended employment contract with notice or termination with immediate effect with an employee represented by the trade union, as its member or upon their request, it is necessary to notify the trade union in writing on the intended termination and its grounds. The trade union’s opinion is not binding for the employer.

**Mass layoff rules**

Special procedure of termination in case of collective redundancies, applicable to employers engaging at least 20 employees terminating employment on grounds not related to individual employees. Collective redundancies cover the dismissal of at least:

- 10 employees in entities normally employing less than 100 employees
- 10 percent of the employees in entities normally employing at least 100, but fewer than 300 employees and
- 30 employees in entities normally employing at least 300 employees.

**Notice**

The length of the notice period depends on the type of employment contract. In the case of an employment contract for a probationary period, it may be 3 days, 1 week or 2 weeks, depending on the length of the probationary period.

The length of notice period applicable to open-ended and fixed-term employment contracts is between 2 weeks and 3 months, depending on the length of service with a given employer.

Parties may agree on a notice period longer than the statutory one. No notice period must be observed by termination by mutual agreement or termination with immediate effect.

**Statutory right to pay in lieu of notice or garden leave**

Pay in lieu of notice is inadmissible. Only if the termination of an open-ended employment contract is due to employer’s bankruptcy or liquidation or other reasons not related to the employee, the 3 months’ notice may be shortened up to 1 month, and the employee is entitled to compensation equal to salary for the outstanding notice period.

Garden leave is permissible for the period of notice, provided that an employee retains the right to their standard remuneration and benefits.

**Severance**

In general, an employee is not entitled to severance pay unless the parties agree otherwise. Only in case of the collective redundancies or an individual termination of employment made exclusively due to reasons not related to
the employee (only by employers engaging at least 20 employees), an affected employee is entitled to severance pay which is fixed on the basis of the period of employment by the employer. The amount of the statutory severance pay is equal to the employee's 1 to 3-months' salary and cannot exceed 15 times the minimum wage.

**POST-TERMINATION RESTRAINTS**

Post-termination restraints – in particular, the confidentiality obligation – result from the statutory provisions or are imposed on the employee upon the separate agreement between the parties. Contractual post-termination covenants are relatively common in Poland in relation to employees who, during their employment, have access to particularly important information (e.g., senior executives).

**Non-competes**

Parties to an employment relationship may enter into a non-compete agreement which will be effective during the term of employment as well as after the employment relationship has ceased. A non-compete agreement must be concluded in writing in order to be valid. A non-compete agreement effective after the termination of employment must specify the period of prohibition of competition, the scope of the non-compete restriction and the amount of compensation due to the employee. The compensation must not be lower than 25 percent of the remuneration received by the employee prior to the termination of the employment relationship for a period corresponding to the period of validity of the prohibition of competition. Polish law allows such compensation to be paid in monthly installments.

**Customer non-solicits**

Statutory prohibition to induce the employer’s clients to terminate, not to fulfill or improperly fulfill their contractual duties with an aim for the inducing person to gain benefits for themselves or for a third party or to cause damage to the employer.

**Employee non-solicits**

Statutory prohibition to induce the person performing work for the employer not to perform or improperly perform their contractual duties with the aim for the inducing person to gain benefits for themselves or for a third-party or to cause damage to the employer.

**WAIVERS**

Waiver of the statutory rights is ineffective and is not enforceable in Poland.

**REMEDIES**

**Discrimination**

An employee or a candidate may claim compensation of at least the statutory minimum wage.

**Unfair dismissal**
In case of unlawful or unjustified termination with or without notice, an employee may claim re-instatement to work on the previous conditions or compensation in the limited amount specified in the statutory regulations.

In case of re-instatement, an employee may also claim remuneration for the period of being out of work in the limited amount specified by the Polish law. In case of unjustified termination without notice served by the employee due to the employer’s fault, an employer may claim compensation in limited amount specified by law. In the case of the re-instatement of protected employees (ie, employees who will reach retirement age in not more than 4 years, pregnant employees, employees on maternity leave or trade union activists), they are entitled to compensation for the entire period of being out of work.

Failure to inform & consult

Failure to inform or consult a works council or a trade union where such notification or consultation are required by law (eg, transfer of undertaking) is subject to criminal sanctions (fine or restriction of liberty).

CRIMINAL SANCTIONS

An employer may be fined from PLN1,000 to PLN45,000 for committing offenses specified in the Polish Labor Code which relate to the employer’s basic obligations.

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LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of European Union (EU), so required to implement relevant EU directives. The official currency is the Euro (EUR). The official language is Portuguese.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity may engage employees in Portugal with proper payroll registrations, subject to business, corporate and tax considerations. The employer is responsible for withholding from an employee’s pay, and delivering to the tax authority, income tax and contributions to Portuguese social security. The level of income tax is defined each year by the government and varies in line with the employee’s salary and other criteria (eg, number of dependants).

PRE-HIRE CHECKS

Required

Immigration compliance. For certain roles (eg, security guards and employees who work with children), a certificate of criminal record check. Pre-hire medical examinations.

Permissible

Reference and education checks are permissible.

The employer may not request a candidate for employment to provide information related to their private life (including criminal record checks), health condition or pregnancy, unless such information is strictly necessary and relevant to evaluate the person’s aptitude for the performance of the employment or when the nature of the professional activity justifies such request, and the reasons for the request are provided, in writing, to the candidate.

Tests and medical examinations (other than the legally required pre-hire medical examinations), including drug tests, may only be requested if aimed at the protection and safety of the employee or third parties, or when the nature of the activity so requires. The employer must inform the employee in writing of the grounds for the
Requesting that an employee or applicant submit to a pregnancy test or medical examination is strictly forbidden.

**IMMIGRATION**

Nationals of the European Economic Area (EEA) and Switzerland have the right to work in Portugal. Residency and work permits are required for non-EEA/Swiss nationals.

**HIRING OPTIONS**

**Employee**

Indefinite-term contract (which is the rule), fixed-term or open-term contract (such as a contract to cover absence; subject to strict limitations), part-time contract, telework contract, intermittent work contract (work during part of the year) and contract under the service commission regime.

Part-time, fixed-term and -term employees should not be discriminated against due to their status.

**Independent contractor**

Independent contractor relationships are permissible and are not governed by labor law. Engagement may be subject to misclassification exposure with high financial risk. Work instructions and organizational integration, in particular, will jeopardize the independent contractor position.

**Agency worker**

Agency workers may only be engaged to fulfill a temporary need for work. The agency work contract may be renewed without limitation (though a limit of 6 renewals may be applicable in certain circumstances), provided that the total duration of the engagement shall not exceed the legal maximum (ie, 2 years, but typically 1 year).

Agency workers have the right to equal treatment to employees in relation to pay and other regular benefits.

**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

Written employment contracts are common, but not mandatory, except for term contracts, part-time contracts, telework contracts, intermittent work contracts, agency work contracts and contracts under the service commission regime. A written statement of the core working conditions must be provided by the employer within 60 days of commencement of employment. Typically, this information is part of a written employment contract.

The employment contract cannot contain conditions that are less favorable to the employee than mandatory employment legislation and applicable collective bargaining agreements (CBA).

**Probationary periods**
PERMISSIBLE.

Maximum duration in case of indefinite-term contract: 240 calendar days for senior top managers; 180 calendar days for other managers, for highly qualified or complex jobs and for jobs of trust; 90 calendar days for other employees.

Maximum duration in case of fixed-term and open-term contracts: 30 days for contracts whose duration is equal to or longer than 6 months, and 15 calendar days otherwise.

POLICIES

Companies with more than 7 employees must adopt and implement a Code of good conduct for preventing harassment in the workplace.

Companies with 50 or more employees and, irrespective of that fact, entities that meet certain legal requirements must implement internal reporting channels.

Although not mandatory, other company policies may be adopted and implemented by the employer. A company policy may take the form of an internal regulation (regulamento interno), in which case it must be posted at the company's premises.

THIRD-PARTY APPROVAL

There is no legal requirement to obtain any third-party approval in respect to any type of employment contract or to a company policy. However, in the event a company policy adopts the form of regulamento interno, previous consultation with the employees' representatives, if any, is mandatory.

LANGUAGE REQUIREMENTS

No statutory requirements, and employees are often open to English agreements or policies. However, it is advisable to draft the employment contract in Portuguese or adopt a bilingual template as, in case of litigation, the courts will require a Portuguese version or official translation.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All employees are entitled to minimum employment rights.

Working hours

Maximum daily and weekly working hours are 8 hours per day and 40 hours per week. If the employee has a managerial position or a job of trust, or usually performs their work outside the company's premises, an exemption regime may be agreed upon by the parties, in which case those limits shall not apply. Typically, employees under the exemption regime are entitled to an exemption bonus.

Overtime
Overtime is allowed to deal with an extraordinary increase in workload, or to prevent serious damage, or if due to force majeure. It is subject to maximum limits: 2 hours when performed on a normal working day, the equivalent to the normal daily working period when performed on a rest day or on a public holiday, and 150 (for medium-sized and large-sized companies) or 175 (for small-sized companies) hours per year.

Overtime must be compensated with additional payment (increase of hourly rates). Work on normal working days leads to a 25-percent increase for the first hour and 37.5-percent increase for additional hours; work on public holidays and on rest days leads to a 50-percent increase. Overtime on the normal rest days (typically, Sunday) also entitles the employee to time off equivalent to 1 day.

CBAs may establish more beneficial treatment for employees.

**Wages**

The minimum wage is fixed by the Portuguese government each year.

CBAs usually establish salary charts with higher minimum wages.

**Vacation**

Minimum 22 working days per year, plus 13 public holidays. CBAs may establish a longer vacation period.

**Sick leave & pay**

Employees are entitled to take off as much time as they need for sick leave. Payment during sick leave is not due from the employer. The Portuguese social security pays sick pay – roughly, between 55 percent and 75 percent of the average last remuneration – for up to 3 years.

**Maternity/parental leave & pay**

120 to 150 days (with deviations in case of multiple births) of initial parental paid leave. It may be shared between the mother and father, but the mother must take at least 6 weeks after birth. In case of shared parental leave, the leave may be extended for 30 more days. The mother may take a part of the parental leave before birth, up to a maximum of 30 days. The pay is borne by the Portuguese social security; it currently varies between 80 percent and 100 percent of the average last remuneration.

The father must take paid parental leave of 20 working days after birth, and subsequently may take an additional 5 working days in addition to the parental paid leave, which must be taken simultaneously with the mother’s parental leave. The pay is borne by the Portuguese social security.

Parents may take other non-paid leave and work part time.

All parental leave is unpaid by the employer.

**DISCRIMINATION**

Characteristics protected: ancestry, age, sex, sexual orientation, gender reassignment, marital status, family status, economic status, education, social origin or status, genetic heritage, reduced working capacity, disability, chronic
disease, nationality, ethnic origin or race, territory origin, language, religion, political or ideological beliefs, union membership and maternity.

Portugal also has specific pay-equity legislation.

Companies employing 75 or more employees, both in the private and public sectors, are required to hire employees with a degree of disability of 60 percent or more, in order to ensure minimum quotas – between 1 percent to 2 percent depending on the company’s headcount.

**BENEFITS & PENSIONS**

Both employer and employee must pay contributions to social security in Portugal to cover different protections (ie, sick leave payment, maternity leave payment, unemployment benefit and retirement pension). The employer must withhold the contribution due by the employee and deliver both contributions – employer and employee – to social security every month.

Current general rates are 11 percent of the gross wage for the employee and 23.75 percent for the employer.

Employees with a minimum contributory period (ie, 15 years) qualify for a retirement pension at age 66 and 7 months (or earlier in case of involuntary long-term unemployment or for some professions) or in cases of total incapacity. Possibility of a paid pre-retirement agreement between employer and employees aged over 55.

Employers have no legal obligation to provide complementary or supplementary social benefits in addition to the social coverage provided for by the social public scheme. However, some companies – mostly large companies or multinational companies who have their own schemes worldwide – set up and provide private complementary health and pension schemes to their employees.

**DATA PRIVACY**

Since May 2018, Portugal is subject to the General Data Protection Regulation (GDPR), which introduced significant new obligations and onerous sanctions for employers.

The local privacy law under the GDPR (Law no. 58/2019) entered into force on August 9, 2019. Limitations to the use of consent within a working relationship and video surveillance were introduced by this law.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

Automatic transfer under the EU Acquired Rights Directive and the Portuguese Labor Code in case of change of employer (eg, sale of an independent standalone business unit, merger or spinoff). Right of the employees to maintain the same terms and conditions. The transfer is not by itself a cause for fair dismissal. Duty to inform, and, in case labor measures are planned (eg, change of work center or change of employment conditions), duty to consult with employee representatives. Under certain circumstances, the employee may oppose the transfer or may resign after the transfer, with entitlement to legal compensation (ie, constructive dismissal).

**EMPLOYEE REPRESENTATION**
Employee representative bodies are permissible, but not mandatory. The employees of a company may 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. The practice is that they exist only in major companies.

- **Union delegates**: Elected by the employees affiliated with a specific union. There may be more than 1 union with representatives in a company.

- **Security and health representatives**: To supervise issues related to security and health. They are not common in Portugal.

- **European Works Council (EWC)**.

Trade unions are prevalent in certain sectors. Industry-level collective bargaining agreements are common in almost all industrial sectors (eg, automobile, chemical, transportation, automobile parts production, pharmaceutical, civil construction and metallurgy).

The employees' representatives are entitled to time off to exercise their duties with payment (with some time limits) and may convene general meetings of employees to take place outside or inside the working schedule (in the latter case, for a maximum 15 hours per year).

The works council has some rights, such as the right to obtain information on some matters of relevance for the company and employees; the right to consultation on some specific matters of relevance for the employees, as defined by the law (though the works council does not have the right of veto in respect to any employer’s decisions); the right to meet periodically with the management; and the right to negotiate a collective labor agreement specific to the company, provided the unions representing the company’s employees delegate that power to the works council, but this is not common.

### TERMINATION

**Grounds**

Termination unilaterally by the employer: dismissal based on objective grounds (redundancy reasons); disciplinary dismissal with just cause (based on serious breach of the employee's duties); dismissal due to unsuitability for the job.

Termination without cause (with notice): only for employees hired under an employment contract of the service commission regime, a particular type of contract for high-level employees which provides flexibility for termination. It is not common.

Other termination causes: mutual agreement, termination by the employee (ie, termination with notice or constructive dismissal with just cause), expiration (eg, fixed-term and open-term contracts or retirement).

**Employees subject to termination laws**
All employees.

**Restricted or prohibited terminations**

Restrictions on terminations and specific procedures required for termination of protected employees:

- Pregnant women and women who have recently given birth (for 120 days after birth) or are breastfeeding, as well as parents who are taking parental leave, are protected against dismissal.

- Unilateral dismissal of protected employees will be allowed if the employer submits an application to the Commission for Equality in Labor and Employment (CITE), and CITE does not oppose to the dismissal; otherwise, the employer must file a lawsuit to obtain a court decision confirming the existence of grounds for dismissal. CITE may decide not to oppose the dismissal if, for example, there are obvious grounds for termination. If CITE opposes, then the employers may prefer to negotiate more generous severance rather than waiting for a court decision.

Termination on discriminatory grounds is prohibited.

Where a victim of harassment is dismissed within 1 year after the complaint, there is a rebuttable presumption that the dismissal is abusive.

**Third-party approval for termination/termination documents**

Except in respect of protected employees, third-party approval is not required to terminate an employment contract.

**Mass layoff rules**

Redundancy dismissal is allowed for 1 or more of the following reasons:

- A definitive closure of the organization

- Closure of 1 or more departments of the organization or

- Personnel reduction based on structural, technological or market reasons.

Collective dismissal rules are triggered if the dismissal involves at least 2 employees (in a company with up to 49 employees) or 5 employees (in a company with 50 or more employees) within a 3-month period.

Information and consultation with the employees’ representatives and with the ministry of employment representative (DGERT) is required. However, there is no need to obtain approval for termination.

If the collective dismissal rules are not triggered, the dismissal procedure due to extinction of the job is applicable. Previous consultation with the employees’ representatives and with the employee is required.

**Notice**

For redundancy dismissal and dismissal due to unsuitability for the job, the following notice is required:
15 days if the employee’s seniority is less than 1 year

30 days if the employee's seniority is at least 1 year but less than 5 years

60 days if the employee's seniority is at least 5 years but less than 10 years

75 days if the employee's seniority is 10 years or longer

Termination by the employee: notice of 30 or 60 days is required, depending on whether the employment contract was in force for up to 2 years, or for a longer period. In case of term contracts: notice of 30 or 15 days is required, depending on whether the duration of the contract is of at least 6 months or otherwise.

Notice periods in case of term contracts:

- Non-renewal of fixed-term contracts: 15 days for the employer and 8 days for the employee.

- Open-term contracts – for example, a contract to cover absence (employer): 7, 30 or 60 days, where the employment contract was in force for up to 6 months, between 6 months and 2 years or more than 2 years, respectively.

Statutory right to pay in lieu of notice or garden leave

If the notice period is not honored, payment in lieu of notice is required.

Garden leave is allowed during the notice period.

Severance

Fair dismissal based on objective grounds (ie, redundancy) or dismissal due to unsuitability for the job: 12 days' salary per year of service, up to 12 months' base salary. The severance is partially (50 percent) paid by a fund (FCT) administered by social security, to which the employer must make contributions.

For employees hired before October 1, 2013, the calculation of the legal severance follows specific and transitory rules.

Fair disciplinary dismissal: no severance.

Higher severance payments may be agreed and are usual as a way to avoid litigation.

POST-TERMINATION RESTRAINTS

Post-termination restraints aimed to protect the employer's legitimate business interests may be enforced, provided that the activity carried on by the employee may cause a potential loss to the employer.

The following types of obligations may be included in the initial employment contract, or may be part of a specific written agreement mandatorily containing:

- An undertaking on non-competing and/or non-solicitation by the employee
• The scope of the obligation (i.e., activity and territory)

• The period of the limitation (the legal maximum is 2 years – 3 years in cases of jobs of trust or jobs with access to information of particular relevance) and

• The amount to be paid to the employee during the period of the limitation – the law does not provide any criteria, but usually it varies between 50 percent and 80 percent of the last monthly remuneration.

In case these legal requirements are not fulfilled, the employee shall not be validly bound.

Non-competes

Permissible under the abovementioned rules.

Customer non-solicits

Permissible under the abovementioned rules.

Employee non-solicits

Permissible under the abovementioned rules.

WAIVERS

In principle, statutory rights cannot be waived, and any waiver of such rights will be null and void.

Some exceptions apply, such as in respect of vacation entitlement (the employee may waive a part of it).

REMEDIES

Discrimination

Remedies include declaration of nullity of the company's decision and compensation.

In addition, companies may face a fine, its amount depending on the size of the company, to be imposed by the labor authority, subject to appeal before the labor courts.

Unfair dismissal

The employee may challenge the validity of the dismissal before the labor courts.

In case of unfair dismissal, irrespective of the cause, the employee is entitled to:

• Payment of back wages (from the dismissal until the date of the court decision) and

• At the employee's option, reinstatement or payment of severance compensation (varying from 15 days to 45 days of base salary per year of service).
Failure to inform & consult

Failure to comply with information and consultation duties in case of dismissal leads to invalidity of the dismissal.

Failure to comply with other information and consultation duties may subject the employer to a fine, its amount depending on the size of the company, to be imposed by the labor authority.

CRIMINAL SANCTIONS

There are criminal sanctions related to employment issues such as improper use of child labor, violation of the autonomy or independence of trade unions, discriminatory acts, disobedience to the labor authority, fraud in respect of withholding taxes or social security contributions and breach of safety rules.

Generally, legal persons are held criminally accountable for felonies committed by their legal representatives and de facto or de jure administrators in their name or on their behalf and to their benefit.

KEY CONTACTS

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LEGAL SYSTEM, CURRENCY, LANGUAGE

Employment matters are predominately governed by Law No. 14 of 2004 (the Labor Law) (as amended). There are also relevant provisions in Law No (21) of 2015 (Sponsorship Law) (as amended) that primarily govern the sponsorship, residence and exit of expatriate employees.

Companies established in the Qatar Financial Centre (QFC) will be governed by QFC laws and regulations with the primary employment law provisions being contained in QFC Regulation No (10) of 2006 (Employment Regulations) (as amended) and QFC Regulation No (11) of 2006 (Immigration Regulations)(as amended). This guide focuses on the State of Qatar (Qatar) labor laws.

The local currency in Qatar is the Qatari Riyal (QAR). The QAR is pegged to the US dollar. The official language of Qatar is Arabic. All legislation in Qatar is drafted and issued in Arabic and all Qatari court proceedings are heard in Arabic.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity cannot directly engage employees in Qatar. It would always need to have at least a subsidiary, branch or trade representative office to engage a local or expatriate employee, because such individuals are required to be registered with the Labor Department at the Ministry of Administrative Development, Labor and Social Affairs (Ministry of Labor) and due to the provisions of the Sponsorship Law.

At present, employees working in Qatar are not subject to income tax, and therefore there are no tax withholding obligations imposed on the employer in the context of an employment arrangement.

There are also no social security requirements, save for in respect of certain companies which are required to contribute to the local General Retirement and Pension Authority on behalf of their local Qatari national employees.

PRE-HIRE CHECKS

Required
Foreign employees must receive prior approval from the Ministry of Labor and Ministry of Interior before they can be hired on local employment contracts. The level of background checking and screening carried out by the Qatar authorities varies on a number of factors including the nationality of an individual and whether the individual is a local hire or recruited from abroad. Insofar as we are aware, local nationals are not subject to the same level of checks as foreign nationals recruited by a Qatari entity from abroad.

In some cases, (depending on the nature of the role) as part of the work permit/residence visa process, employees will be required to provide an attested copy of their degree/high school certificates to the Ministry of Labor.

Permissible

Generally, employers in Qatar are not able to obtain the same level of information from background checks as they can in other jurisdictions and, in most cases, the employees themselves will be required to provide this information. For example:

- Criminal record: In Qatar, police checks or Certificates of Good Conduct can only be obtained by the individual from the Criminal Evidences and Information Department (CEID). To obtain the Good Conduct Certificate, the individual, if a foreign national, may also be required to obtain police clearance from their home country and provide an attested copy of this policy clearance to the CEID.

- Employment: There is provision in the Labor Law for employers to provide all employees with a certificate of service if requested, so candidates should be asked to verify their employment history.

IMMIGRATION

In order to legally work and reside in Qatar, all employees except Qatari nationals (who require a work permit only) are required to have a residence visa and work permit under the sponsorship of the employer (which must have an entity established in Qatar) or the husband, in the case of a married woman. There are certain limited exceptions to this requirement.

Qatar has also introduced a permanent residence visa regime. Under this regime, foreign nationals may be granted permanent residence visas by Qatar. There are, however, prescribed conditions foreign nationals must satisfy in order to qualify for a permanent residence visa. There is also a limited annual quota on the number of permanent residence visas that may be issued in any given year. This quota may be decreased or increased ultimately by virtue of the decision of the Emir of Qatar.

Where an employee is only required to work in Qatar for a short period of time, there are alternative permits that may be considered, although suitability will depend on the type of work to carried out.

Amendments to the Sponsorship Law in Qatar have made it easier for expatriate workers to change employers and to leave the country. Under current provisions, expatriate employees no longer need to obtain an exit permit from their sponsor of residence prior to leaving the country (with certain exceptions). In addition, non-Qatari citizens no longer need a “No-Objection Certificate” to change employers – however, they must comply with any notice period requirements under the Labour Law.

HIRING OPTIONS
Employee

Unlimited or fixed term. Part-time employment is legally possible but is not common.

Independent contractor

There is no concept of a consultant, unless individuals have established their own professional license and business, due to the requirement for employees to have sponsorship, which is generally obtained by the employer.

Agency worker

There is no general concept of an agency worker or "temp" in Qatar. Some Qatari-owned employment agencies are licensed to provide manpower on a temporary basis (and the individual would remain under the agent's sponsorship) and the executive regulations to the Sponsorship Law do seem to contemplate employees working in Qatar on a temporary basis but such employment arrangements are not clearly detailed in Qatar law.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

Non-Qatari national employees are required to sign a standard government employment e-contract to obtain their work permit and residence visa. This contract is in dual language format and contains (as a minimum) Arabic and usually, English.

In light of the basic nature of the standard government e-contract, it is common for more detailed employment contracts to be entered into by the employer and employee.

Probationary periods

Permissible. Maximum duration of 6 months, during which time the employee is entitled to 3 days' notice of termination.

Policies

There are mandatory policies. Employees should ideally be provided with notice of the employer's policies on commencement of employment. The policies should be present in a conspicuous place at the employer's offices (such as the notice board, if any). The employer's policies should be aligned with the Labor Law and approved in advance by the Ministry of Labor. This requirement under the Labor Law is not rigorously enforced and nor actively implemented.

Third-party approval

The government employment e-contract must be lodged with the Labor Department at the Ministry of Labor as part of the employee's work permit and residence visa process. Strictly speaking, any contractual changes should be notified to the Labor Department and amended on the filed government employment e-contract.

LANGUAGE REQUIREMENTS
Pursuant to the Labor Law, all employment contracts and records must be in Arabic. Where a foreign language is used in addition to Arabic, the Arabic version shall prevail.

**MINIMUM EMPLOYMENT RIGHTS**

**Employees entitled to minimum employment rights**

All. Additional rights are also available to young workers (those under the age of 18) and women.

**Working hours**

Maximum ordinary working hours = 48 hour per week at the rate of 8 hours per day. During the month of Ramadan, maximum working hours = 36 hours per week at the rate of 6 hours per day.

**Overtime**

The maximum working hours specified above must not exceed 2 hours per day, unless the work is essential for preventing a substantial loss or serious accident or for eliminating or relieving the impact of a serious accident.

The overtime and maximum working time provisions in the Labor Law do not apply to a number of prescribed categories of employees primarily, employees holding senior executive managerial or supervisory positions.

**Wages**

The minimum wage in Qatar is QAR1,000 per month. An employer must also provide its employees with suitable accommodation and meals. If the employer does not, then it must provide a monthly accommodation allowance of QAR500 and a monthly food allowance of QAR300.

**Vacation**

A minimum of 3 weeks' vacation per year, where the employee's period of service is less than 5 years, and a minimum of 4 weeks' vacation where the employee's period of service is 5 years or more.

**Sick leave & pay**

Employees are entitled to 12 weeks of sick leave per year of service (2 weeks at full pay, 4 weeks at half pay and the remaining 6 weeks without pay). Employees are not entitled to statutory sick leave until they have completed 3 months’ service and unless they provide a sickness certificate from a physician approved by the employer.

**Maternity/parental leave & pay**

After 1 year’s continuous service 50 calendar days’ maternity leave at full pay. An employee can take a further 60 consecutive or non-consecutive days (unpaid) if the employee falls ill as a result of her pregnancy or the delivery of her baby.

There is no concept of parental leave or pay in Qatar.

**DISCRIMINATION**
There are no discrimination laws in Qatar except for provisions which state that a woman must be paid the same as a man if she performs the same work and must be provided with the same opportunities with regards to training and promotion. The topic of discrimination is however addressed in Qatar’s Constitution which prohibits discrimination on numerous grounds. Qatar is a signatory to (and ratified) a number of international conventions relating to human rights and discrimination. Qatar has also set up a number of human rights committees that in turn ultimately ensure that individuals are treated fairly and on equal footing and are not discriminated against.

**BENEFITS & PENSIONS**

It is mandatory for Qatari nationals working for government entities or joint stock companies (public or private) to be registered with the relevant pension authority. In addition, there are other companies that have been specifically made subject to this requirement pursuant to special resolutions issued by the Council of Ministers of Qatar. Employers are required to contribute to the pension fund and deduct employee contributions from the employee’s salary.

All employees are entitled to receive an end-of-service gratuity (EOSG) on termination, calculated by reference to length of service, unless the employer contracts out of these arrangements with its employees by providing a savings scheme or pension scheme that is at least as lucrative as the EOSG payout. There are certain conditions under the Labor Law, which if present, would absolve an employee’s right to an EOSG.

Qatar has adopted a wages protection system (WPS) whereby all employees must be paid in QAR once a month directly into a local bank account, or, for some categories of workers, every 2 weeks. The requirements took effect on November 2, 2015. Firms that flout the new rules risk penalties that may include monetary fines and an imprisonment term. While the requirement to pay via WPS only applies to employers under the Labor Law, in practice, the WPS is also used by a number of employers within the QFC.

**DATA PRIVACY**

On November 2016, Qatar issued a stand-alone data protection law No. 13 of 2016 on Protection of Personal Data Privacy (Data Protection Law). Businesses must take action to protect the privacy of personal data or risk fines of up to QAR 5 million. Key features of the law include:

- Personal data is defined as data relating to an individual whose identity is determined, or able to be reasonably determined, either through the data or through linking this data with other data

- The Data Protection Law applies to personal data when it is processed electronically, or when it is accessed or collected or extracted otherwise in preparation for its electronic processing, or when it is processed in a traditional and electronic way together

- The processing of personal data will be regulated in a way which bears similarities with existing data protection regulations elsewhere in the world

- Particular protection will be provided to certain types of personal data, such as data relevant to children, to physical and mental health and to crimes referred to as sensitive personal data
For example, parental consent will be required in connection with the online collection and processing of the personal data of children.

- Businesses will need to implement suitable measures, including training, to protect personal data from loss, damage, modification, disclosure or illegal access.

- Direct marketing will require the prior consent of the intended recipient and, amongst other requirements, the relevant communication must include a means by which the recipient may opt-out of future communications.

This law may sit alongside the Qatar Financial Centre data protection regulations. It is also important to note that as per the Qatar Penal Code it is advisable to seek prior written consent to the processing of personal data from the employee to the extent necessary to overcome the various privacy protections.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

No automatic transfer principles and no laws covering business transfers. Employees transfer through termination and rehire in an asset deal.

EMPLOYEE REPRESENTATION

Trade unions/workers committees are not common in Qatar and are rarely formed, but they are permissible provided certain conditions are fulfilled. Employees in workers organizations may go on strike if an amicable settlement has become impossible and if they have complied with a number of Labor Law requirements.

TERMINATION

Grounds

Termination possible on these grounds: during the probationary period (provided the employee is proved to be incapable of carrying out the work), on the expiry of a fixed term contract, resignation, upon the mutual consent of the employer and employee, incapacity or death, dismissal with notice and summary dismissal (by reason of any of the grounds listed in Article 61 of the Labor Law). Article 61 of the Labor Law sets out a limited list of circumstances (including when the employee attends work under the influence of alcohol, or is absent from work for period of 7 consecutive or 15 non-consecutive days) where an employee’s employment agreement may be terminated without notice while forfeiting the employee’s right to an EOSG. There is no general misconduct category.

Employees subject to termination laws

All employees.

Restricted or prohibited terminations

Employees who have not exhausted the statutory sick leave entitlement are protected from dismissal on grounds of health, unless the full sick leave entitlement has been taken (ie, 12 weeks per year of service). Women
employees are protected from dismissal during maternity leave. A female employee may not be dismissed on grounds of her marriage.

Third-party approval for termination/termination documents

No.

Mass layoff rules

Without prejudice to the termination notice periods, employers seeking to terminate employment agreements for reasons not provided for in the employment contract (eg, due to economic reasons), must give notice to the Ministry of Labor at least 15 days prior to the termination date together with a statement of the reasons for termination, the number and categories of employees who will be affected, and the period during which the layoffs will take effect.

Notice

A minimum of 1 month’s written notice where the employee has 2 years of service increasing to a minimum of 2 months’ written notice where the employee has more than 2 years’ service.

Statutory right to pay in lieu of notice or garden leave

There is a statutory right to pay in lieu of notice. Garden leave is not expressly and specifically dealt with in the Labor Law. As such, the employer and employee may contractually agree to provisions relating to garden leave.

Severance

Unless terminated under Article 61 of the Labor Law, employees are entitled to salary and benefits up to the termination date, notice (or payment in lieu), payment in lieu of accrued but untaken annual leave, the cost of a flight/air ticket to repatriate the employee to their home country or any other place agreed to by the employer and employee (unless the employee has obtained alternative sponsorship to remain in Qatar), an EOSG and reimbursement of unpaid business expenses.

In case of employer termination, employees are eligible for an EOSG where they have more than 1 year of continuous service. EOSG accrues at the rate of 3 weeks’ final basic salary for each year of completed service unless the parties agree on a greater amount. The calculation is prorated for any fractions of a year service that have not been completed. A different EOSG regime may apply for employees employed prior to 2004.

POST-TERMINATION RESTRAINTS

It is permissible to have restrictive covenants contained in the contract of employment to the extent necessary to protect the legitimate interests of the employer, provided the nature of the employees’ work allowed them to know the company’s clients and/or know the secrets of the business.

The covenants must be restricted in relation to duration (which must not exceed 1 year) and the nature of the business to be protected.

Non-competes
Typically no longer than 6 to 12 months.

**Customer non-solicits**

Typically no longer than 6 to 12 months.

**Employee non-solicits**

Permissible.

**WAIVERS**

Waiver agreements are commonly used, but their enforceability cannot be guaranteed.

**REMEDIES**

**Discrimination**

Not applicable.

**Arbitrary dismissal**

The court can award the employee compensation and/or in very rare instances, reinstatement. There is no cap on the level of compensation a court can award but typically this would be 2 -3 months of an employee’s wage; however, this is dealt with on a case by case basis. Where a court orders reinstatement, it can also award compensation for the wages lost during the period the employee was prevented from working.

**Failure to inform & consult**

Not applicable.

**CRIMINAL SANCTIONS**

Criminal sanctions can be imposed for a variety of reasons, including, but not limited to, the breach of health and safety obligations, breach of immigration laws, breach of data protection laws and breach of confidentiality.
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ROMANIA

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of the European Union (EU), so required to implement relevant EU directives. The official currency is the Romanian leu (RON). The official language is Romanian.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Typically, foreign entities set up a Romanian presence in order to conduct business in Romania, which may engage employees under individual employment agreements, but which are required to have registered with both the fiscal authorities as well as the labor authorities which handle all employment- and payroll-related registrations.

Although it is not the typical scenario envisaged by the Romanian Labor Code, and it might trigger some practical difficulties (mainly from a payroll and tax perspective), there is no express legal provision prohibiting foreign companies without a Romanian presence from executing individual employment agreements directly with Romanian individuals. Thus, a foreign entity may engage staff in Romania, subject to business, corporate and tax considerations.

PRE-HIRE CHECKS

Required

A request for a medical certificate or check may only be made for the purpose of ascertaining the applicant’s ability to perform the work in question, and the cost of the medical check must be met by the employer. Immigration compliance also must be considered where relevant.

Permissible

Reference checks with respect to an applicant’s length of employment and work performed for former employers are common and permissible, although the applicant should be informed in advance. Processing any data regarding criminal records is generally prohibited.
IMMIGRATION

Nationals of the EU, the European Economic Area (EEA) and Switzerland have the right to reside and work in Romania, subject to observance of applicable legal conditions and typically subject to obtaining a registration certificate for stays of longer than 3 months. Non-EU, non-Swiss and non-EEA nationals must comply with the immigration-related requirements for entry, stay and work in Romania, with the company employing them being under various procedural obligations related to engaging foreign individuals to work in Romania.

HIRING OPTIONS

Employee

Indefinite as a rule, fixed-term (only in the cases expressly provided by the law and subject to specific legal conditions), full-time or part-time. Part-time and fixed-term employees have the right not to be discriminated against on the basis of such status.

Independent contractor

Engagement of independent contractors may expose the employer to the risk of the arrangement being reclassified as an employment relationship, with the possibility of it being construed that the parties have attempted to circumvent applicable employment law provisions.

Agency worker

Use of temporary employees via a temporary work agency is permitted only for executing a temporary and specific assignment, the maximum duration of which, including all successive renewals, is 36 months. Temporary employees are hired by the temporary work agency under a temporary individual employment agreement.

Employers may also have an individual assigned or seconded to them by another employer, provided that all applicable legal conditions are observed and only for a limited period of time.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

Execution of an individual employment agreement in writing in Romanian and registration of the agreement with the general registry of employees, which is an electronic registry set up by each employer using the platform made available by the authorities and periodically communicated to the relevant labor authorities.

Probationary periods

Only 1 probationary period may be used per individual employment agreement, with certain exceptions. As a rule, the maximum duration is 90 calendar days for executive-level positions and 120 calendar days for management-level positions. By way of exception, among others, shorter probationary periods are applicable to employees working under a fixed-term agreement and temporary employees, the exact duration depending on the term of their employment and their position.
Policies

Employers are required to implement internal regulations as an employee handbook, in consultation with the relevant employee representative body. The internal regulations must include certain minimum provisions, such as rules on health and safety at work, disciplinary-related rules, a grievance procedure and employee professional evaluation criteria and procedures. Employers may also unilaterally implement other work-related rules, such as dress code or employee-specific obligations, via their internal regulations or as separate internal policies or procedures. As of May 2019, employers are required to implement specific policies on equal treatment and workplace anti-harassment, including (i) an internal policy on zero tolerance of workplace harassment and outlining anti-harassment actions and (ii) an internal policy on the steps which will be taken to facilitate immediate notification to the competent public authorities in the event that the employer is ever notified of a breach of equal treatment legislation.

Third-party approval

As a general rule, there is no requirement to lodge employment policies with or receive approval from any third party. The implementation of internal regulations is only subject to consultation with the relevant employee representative body, and there is no need to reach agreement with them or secure consent.

LANGUAGE REQUIREMENTS

There is a statutory requirement to execute individual employment agreements in Romanian; a bilingual format, including a Romanian language version, is also possible. It is not a statutory requirement for internal regulations or policies to be in Romanian, but this is strongly recommended.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All, in line with the Romanian labor legislation.

Working hours

Weekly working time for full-time employees is 40 hours per week. As a rule, this is evenly distributed, amounting to 8 hours per day for 5 days (generally Monday to Friday). Weekly rest is 48 consecutive hours, usually Saturday and Sunday. By law, maximum working time cannot exceed 48 hours per week, including overtime. No opt-out is possible; however, there are certain exceptions under which the working time may exceed 48 hours per week.

There are specific rules on rest breaks, weekly rest, night work and rest periods between shifts.

Overtime

Work performed outside of normal working time is considered overtime. Overtime performed in normal working days must be compensated with:

- Paid time off granted within 90 calendar days after the overtime has been performed or
If paid time off is not possible within this legal deadline, payment of additional monetary compensation (in addition to the monthly salary due for the respective month) of at least 75 percent of the hourly base salary for each overtime hour.

If overtime is performed during weekly rest periods and/or days of legal/public holiday, additional compensation must be paid on top of the overtime compensation.

**Wages**

From January 1, 2022, employees can only be paid the minimum gross base salary for a maximum of 24 months. When this period expires, employers will be required to pay the respective employees a higher salary. These new provisions are also applicable for ongoing individual employment agreements entered into prior to the change. The maximum 24 month period is calculated as of January 1, 2022.

As of January 1, 2022, the minimum gross base monthly salary at the national level is set at RON 2,550 (approximately EUR 515) for employees working full-time hours.

Exceptionally, for the period between January 1, 2020 and December 31, 2028, and only for the construction sector, the minimum base monthly gross salary at the national level is RON 3,000 (approximately EUR610).

**Vacation**

The minimum vacation is 20 working days; in practice, based on the old legislation, employees' expectation is 21 working days. This does not include the 15 public holidays. Employees who practice Christianity benefit from the following public holidays, which are included within the 15 public holidays: Good Friday (the last day of Friday before Easter), the first and second day of Easter, and the first and second day of Pentecost. Time off occurs on the date when these are celebrated according to the worship they belong to, and employees recover the extra days off based on a schedule established by their employer.

**Sick leave & pay**

Generally, employees may take sick leave up to 183 days per year, based on a medical certificate and for the duration specified in the certificate, depending on the type of illness. As a rule, the first 5 days of sick leave are paid by the employer, and the following days are paid from the health insurance budget. Sick pay generally is 75 percent of the average salary of the employee for the last 6 months out of a 12-month representative insurance period. The basis for calculating the contribution is capped at the threshold of 12 minimum monthly gross salaries established at national level, which is currently approximately EUR6,200.

**Maternity/parental leave & pay**

Female employees benefit from 126 days of maternity leave, which may be split equally or otherwise between the pre- and post-birth period (subject to a minimum 42 calendar days' leave which must be taken after the birth).

Male employees benefit from 5 working days of paternal leave, to be taken in the first 8 weeks after the child’s birth, to enable effective participation in the care of the newborn. This may be extended once to a total of 15 working days if the father has undertaken a childcare course.

In addition, either parent is entitled to take child-raising leave up until the child is 2 years old (or 3 years old in the case of a child with disabilities), subject to the requirement that at least 1 month of the leave must be taken by the
other parent.

**DISCRIMINATION**

Direct and indirect discrimination is prohibited, along with victimization and harassment, including sexual harassment, psychological harassment and moral harassment. Employers have an obligation to include provisions prohibiting discrimination in their internal regulations, as well as corresponding disciplinary sanctions.

The main characteristics protected from unlawful discrimination and harassment include race, nationality, ethnic background, language, religion, social category, beliefs, age, disability, sex or sexual orientation, among others.

**BENEFITS & PENSIONS**

Currently, there are no general benefits applicable by law to all employees, but there are some that apply only in specific cases, such as employees working under a mobility clause.

Private pensions are not typically provided in practice as an employment benefit. By law, all employees are insured under the state statutory pension system and social security (ie, pension) contributions are currently made by employees provided they work in normal conditions. For employees who work in particular or special conditions, there is an additional contribution to the pension fund, paid by the employer.

On February 7, 2020, Romania implemented a new law on occupational retirement benefits which transposed the EU Directive 2016/2341 on the activities and supervision of institutions for occupational retirement provision (IORP).

On July 19, 2021, the template individual employment agreement regulated by the Ministry of Labor was amended to include an employer’s obligation to inform the employee about their obligation to adhere to a privately managed pension fund, in accordance with the special legislation. For clarity, the new law only adds the requirement to inform employees of their legal obligation (if they have such legal obligation) to adhere to a privately managed pension fund.

**DATA PRIVACY**

Employees must be informed of personal data processing – and in certain limited cases, must give consent.

Since May 2018, Romania has been subject to the General Data Protection Regulation (GDPR), which introduced significant new obligations and onerous sanctions for employers. Under the GDPR, specific rules apply to any personal data transferred outside the European Economic Area aimed at ensuring that appropriate safeguards are provided for the transferred personal data and that enforceable data subject rights and effective legal remedies for data subjects are available.

Monitoring of employees, including email and internet use, may be performed under very specific circumstances, provided that the legal provisions which impose restrictions on interference with the protection of private life, data privacy and electronic communications are complied with.
RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Automatic transfer under the EU Acquired Rights Directive and Romanian Transfer of Undertaking Law No. 67/2006 (TUPE) in asset deals typically involving a business or undertaking sale. This entails transfer of the rights and obligations arising from the transferred employees’ individual employment agreements and the applicable collective bargaining agreement – for its duration – in force on the transfer date. There are restrictions on changing terms and conditions of employment following a transfer. There is a duty to inform and, in certain cases, to consult with the employee representative bodies for both the transferor and the transferee. Any dismissal connected to the transfer is prohibited.

EMPLOYEE REPRESENTATION

The main employee representative bodies are:

- Employee-elected representatives
- Trade unions

Works councils are not expressly regulated unless there is a European works council.

Collective bargaining agreements may be executed:

- At the company level (negotiated between the employer and the competent employee representative body)
- At the group company level or
- At the sector (ie, industry) level. In this case, an employer must be a signatory to such an agreement in order for it to apply to their employees, although extension to the entire sector is possible in certain circumstances.

TERMINATION

Grounds

Termination implemented by the employer is permissible:

- On the following grounds only:
  - For reasons not related to the individual employee (ie, redundancy)
  - For reasons related to the individual employee, namely:
    - Poor performance
    - Serious or repeated misconduct (ie, disciplinary)
Medical unfitness

Arrest of the employee for a period exceeding 30 days

Subject to strictly complying with the procedure provided by law

A simplified form of termination is also possible at the initiative of either party, during or at the end of the probationary period, exclusively on the basis of a written notice, with no notice period nor termination grounds being required.

Employees subject to termination laws

Termination rules equally apply to all employees with no seniority threshold required by law.

Restricted or prohibited terminations

A dismissal may never be implemented on discriminatory grounds or for exercising the right to strike or trade union rights.

A dismissal may not be implemented, for example, during temporary work incapacity (i.e., medical leave), during pregnancy (provided that the employer acknowledged the pregnancy before issuing the dismissal decision), during maternity leave or child-raising leave or during vacation or annual leave.

Third-party approval for termination/termination documents

There are no third-party approvals expressly required by law; however, there is a requirement to involve certain labor authorities during a mass layoff process or, in specific cases, during a poor-performance or medical unfitness dismissal, including an obligation to provide them with relevant termination-related documents.

Mass layoff rules

Strict information and consultation rules apply where, over a 30-calendar-day period, a certain number of employees are to be made redundant. The thresholds depend on the employer’s total headcount and previous terminations. For example, the rules apply where at least 10 employees are to be dismissed if the company employs between 21 and 99 employees. The employer must also notify the territorial labor inspectorate and the workforce occupancy agency at set times during the redundancy process.

Notice

The minimum notice period provided by the law in case of dismissal is 20 working days. Longer notice periods may be agreed upon and set out in the individual employment agreement. By law, notice is not required for disciplinary terminations, nor in case of termination due to the employee being under arrest for a period exceeding 30 days.

Statutory right to pay in lieu of notice or garden leave

No express regulation under Romanian employment law. However, the Romanian High Court of Cassation and Justice has ruled that payment in lieu of notice is not permitted as it essentially breaches an employee’s fundamental legal right to receive notice.
Severance

There is no minimum level of severance payment expressly provided by the law. However, in practice, employers may decide to make a severance payment.

POST-TERMINATION RESTRAINTS

Non-competes

The parties may negotiate a post-termination non-compete clause prohibiting the employee from performing an activity competing with the one performed for their (previous) employer.

In order to be valid, a non-compete clause must specify certain minimum content as required by the Romanian Labor Code:

- The prohibited activities
- The amount of the non-competition indemnity
- The duration of the prohibition
- The third parties for which the employee cannot perform the prohibited activities
- The prohibited territory

As a non-compete restraint represents an exception from the principle of freedom of work, failure to comply with the legal conditions for implementing such a clause may render the clause void.

Customer non-solicits

Not expressly regulated by the law. May arguably be included within the scope of a non-compete clause.

Employee non-solicits

Not expressly regulated by the law. May arguably be included within the scope of a non-compete clause.

WAIVERS

Under the Romanian Labor Code, employees cannot waive their rights recognized by the law, and any transaction with the purpose of waiving or limiting such rights will be null and void.

REMEDIES

Discrimination

Uncapped compensation, based on the claimant’s financial and moral loss, as proven in court. In addition,
administrative and criminal liabilities may also be triggered for the employer.

**Unfair dismissal**

Failure to comply with dismissal requirements can lead to the court:

- Annulling the dismissal decision
- Ordering re-instatement, if requested by the employee
- Ordering payment of salary rights between the dismissal and the court decision which the employee would have benefited from if not unlawfully dismissed
- Ordering payment of damages (including moral damages), if proven by the employee
- Ordering payment of trial expenses incurred by the employee, such as legal assistance expenses

Depending on the factual circumstances, other claims – such as discrimination or criminal complaints – cannot be excluded.

**Failure to inform & consult**

Uncapped compensation, based on the claimant's financial and moral loss, as proven in court. This also exposes the employer to administrative fines up to approximately EUR 10,000.

**CRIMINAL SANCTIONS**

Infringement of health and safety rules may lead to criminal sanctions where human life has potentially been put in jeopardy. Criminal liability is also triggered, for example, in cases of repeated breach of the obligation to pay minimum salary, repeated refusal to permit labor inspectors access to any of the company’s locations or refusal to provide inspectors with requested documentation.

**KEY CONTACTS**

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RUSSIA

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. The official currency is the Russian Ruble (RUB). The official language is Russian.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity cannot directly employ individuals in Russia and may only operate in Russia after the corporate registration of a branch or representative office in Russia or a Russian subsidiary.

Personal income tax is to be withheld through payroll.

PRE-HIRE CHECKS

Required

Immigration compliance and military compliance (with regard to a person’s obligation to serve in the military). In certain situations, a criminal record check.

Permissible

Criminal and credit reference checks are only permissible for specific roles (eg, certain finance positions and educational institutions) and are subject to proportionality requirements. Reference and education checks are common and permissible with the applicant’s consent.

IMMIGRATION

Foreign nationals – except for citizens of Belarus, Kazakhstan, Kyrgyzstan and Armenia – must obtain special migration documents (eg, work permits and patents) to be employed or commence working in Russia. Employers are also required to provide financial, medical and social guarantees in respect of their foreign employees and must comply with general migration monitoring requirements and file notifications regarding foreign employees' travel both into and out of Russia, in accordance with the statutory procedure.
HIRING OPTIONS

Employee

Indefinite, fixed-term, full-time or part-time.

A definite fixed-term employment agreement may be concluded but cannot be for a term longer than 5 years. Additionally, it may only be concluded in the circumstances specifically provided for by Article 59 of the Labor Code.

Independent contractor

Independent contractors may be engaged directly by the company. There are severe penalties if a services agreement is requalified as a labor agreement.

Agency worker

The loan of labor (ie, secondments) is generally prohibited. Under the law, secondments are only permitted:

- by private (accredited) employment agencies or
- between related entities, including affiliates or parties to shareholder agreements.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

An employment contract must be made in writing and specify the employment commencement day as well as other mandatory details.

Probationary periods

Generally permissible. 3 months for newly hired employees and 6 months for employees hired for certain executive positions.

Policies

Written internal policies, such as internal labor regulations and a personal data protection policy, are mandatory. The employer may also adopt other policies, such as a remuneration policy or a confidential information protection policy.

Third-party approval

Internal labor regulations and certain other policies must be approved by employees’ representatives and trade unions, if at least half of the company’s employees are members.

LANGUAGE REQUIREMENTS
All documents should be in Russian or drafted bilingually where the Russian version prevails so that they may be presented to the Russian authorities without translation.

**MINIMUM EMPLOYMENT RIGHTS**

Employees entitled to minimum employment rights

All.

**Working hours**

A standard working week is 40 hours. In some exceptional cases, this is decreased by the Labor Code.

**Overtime**

In general, any time worked over the standard working hours (eg, 40 hours per week) is classed as overtime.

No more than 120 hours of overtime a year and no more than 4 hours of overtime in any 2 consecutive days are permitted. In most cases, overtime is only permitted with the employee's prior written consent.

Overtime must be paid at a rate of 150 percent of the regular hourly rate for the first 2 hours of overtime worked in a single day, and at a rate of 200 percent of the regular hourly rate thereafter. Upon an employee's written request, the employer must compensate overtime work by granting the employee additional time off in lieu of payment, which should be no less than the overtime worked.

Certain limitations regarding overtime apply to protected employee categories, which include employees under the age of 18, pregnant women, women with children under the age of 3, disabled employees and certain other categories defined by federal law.

The employee may follow a non-standard working hours regime under the employment contract, which means that they occasionally can be involved in the performance of job functions outside regular working hours (ie, employees with a non-standard working day). Work under a non-standard working day is not considered overtime.

**Wages**

The law sets minimum monthly earnings, which may be different depending on the region. As of January 1, 2022, the federal minimum monthly wage is RUB13,890; in Moscow, it is RUB21,371.

**Vacation**

At least 28 calendar days per year of employment. For certain categories of employees, this statutory minimum may be extended (eg, employees with a non-standard working day are entitled to 3 calendar days in addition to the standard annual vacation).

**Sick leave & pay**

Employees are entitled to receive statutory sick leave compensation. This is covered by the Russian State Social
Insurance Fund, which in turn is funded by the employer’s mandatory contributions paid as a percentage of its employees’ salaries. The amount of sick leave compensation varies according to the grounds for the sick leave. In cases of a labor-related injury or occupational illness, the amount of sick leave compensation is 100 percent of the employee’s average earnings. However, sick leave compensation may not exceed the maximum established by federal law, which is subject to annual review. Employees are required to obtain a medical certificate in electronic form for their absence. Generally, an employer cannot terminate an employee’s employment while an employee is on sick leave.

Maternity/parental leave & pay

Paid maternity leave generally begins to accrue no later than 70 calendar days prior to the birth and continues for 70 calendar days thereafter, although the period may be extended in the event of multiple births and/or complications during the birth. The amount of maternity leave allowance is established by federal law and is subject to annual review. The allowance shall be paid by the Russian Social Insurance Fund.

A person caring for a child, be it the child’s mother, father or any relative who is raising them, may request to take childcare leave until the child is 3 years old. The amount of child leave allowance is established by federal law and is subject to annual review. The allowance shall be paid by the Russian Social Insurance Fund. The employee retains the right to return to work during the entire period of the maternity or childcare leave.

DISCRIMINATION

Characteristics protected from unlawful discrimination and harassment include age, place of residence, disability, gender reassignment, family status, wealth, occupation, pregnancy or maternity, race, nationality, language, origin, religion or belief, gender and sexual orientation, among others.

BENEFITS & PENSIONS

Currently, there are no benefits required other than those covered under social insurance contributions.

DATA PRIVACY

In certain cases, employers are required to obtain the prior written consent of their employees in order to process their personal data (e.g., transfer personal data to third parties including cross-border transfers).

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Employees must consent to a transfer of employment and generally cannot be dismissed because of the transfer. It is possible to terminate the agreements with the general director, their deputy and chief accountant within 3 months of a change of owner in certain instances.

EMPLOYEE REPRESENTATION

Employees may be represented either by trade unions or by another employee representative(s). Under current
laws, in order to create a basic trade union organization or another representative body, it is sufficient to have 3 employees who should jointly decide to create a primary trade union, elect the union leader and approve the regulations. It is not necessary to register the trade union as it is deemed to have been created upon the adoption of all the abovementioned decisions.

**TERMINATION**

**Grounds**

The Labor Code sets out specific circumstances for which an employer may terminate the employment of an employee, which include, but are not limited to, the following:

- The employee's repeated failure to perform their employment duties without a justifiable reason (if the employee was lawfully disciplined during the preceding 12 months)
- Dismissal due to redundancy
- Gross misconduct (e.g., the employee's unjustified absence from the workplace for more than 4 consecutive hours during 1 working day).

**Employees subject to termination laws**

All employees.

**Restricted or prohibited terminations**

Certain categories of employees stipulated by the Labor Code enjoy additional protection. These include, among others, minors, employees on sick or holiday leave, pregnant employees, employees with children and trade union members.

**Third-party approval for termination/termination documents**

Local trade union, if any, for dismissals involving trade union members and in some other cases as defined by the legislation.

**Mass layoff rules**

Strict information and notification rules apply when 50 or more employees are to be made redundant within 30 calendar days, 200 or more employees within 60 calendar days, or 500 or more employees within 90 calendar days. The rules also apply in case of the dismissal of employees amounting to 1 percent of the total number of employees in connection with the liquidation of the organization or a staff reduction within 30 calendar days in areas with fewer than 5,000 employees in total. This rule may differ depending on the region and industry and the provisions of collective industrial agreements.

The employer must also notify the Russian Employment Service of the redundancies.

**Notice**
The mandatory notice could vary depending on the grounds for termination (e.g., 2 months’ notice for redundancy). No notice is required for dismissals due to gross misconduct, as defined by law.

Statutory right to pay in lieu of notice or garden leave

No, except for a redundancy notice subject to the consent of the employee.

Severance

Payments to redundant employees of at least 1 month’s average earnings (Average Pay). Additionally, an employee is also entitled to 1 more payment of Average Pay if they remain unemployed within 2 months after the termination date. They are also eligible for 1 additional payment of Average Pay if they are not employed within 3 months from the termination date, provided that they registered with the Russian Employment Service within 2 weeks of the termination date. At the employer’s discretion, severance in the amount of 3 times the Average Pay may also be paid as a lump sum.

A payment in the amount of at least 3 times the Average Pay in the event of the removal and dismissal of the general director.

POST-TERMINATION RESTRAINTS

Generally unenforceable.

Non-competes

Generally unenforceable.

Customer non-solicits

Generally unenforceable.

Employee non-solicits

Generally unenforceable.

WAIVERS

Unenforceable.

REMEDIES

Discrimination

Compensation for moral harm is legally uncapped. However, Russian courts tend not to satisfy claims for damages exceeding a certain maximum.

Unfair dismissal
Reinstatement of employment and compensation for lost salary, plus accrued interest and compensation for moral harm (see above).

Failure to inform & consult

Violations of labor law, including for a failure to inform and consult, could generally result in a fine from between RUB 30,000 and RUB 50,000 for the company (RUB50,000 to RUB70,000 for repeated failure), and from between RUB1,000 and RUB5,000 for the company’s officials (from RUB10,000 to RUB20,000 or disqualification for repeated failure).

In case of a wrongful dismissal, the employee may be reinstated to their position.

CRIMINAL SANCTIONS

Criminal sanctions are not generally a concern for employers acting as legal entities. However, company officials, including the general director of a Russian legal entity, may be subject to criminal sanctions for certain crimes (eg, labor safety violations).

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SAUDI ARABIA

LEGAL SYSTEM, CURRENCY, LANGUAGE

Shariah law is the applicable law in the Kingdom of Saudi Arabia (Saudi Arabia or KSA). Despite being a member of the Gulf Cooperation Council (GCC), Saudi Arabia is generally not required to implement the relevant GCC laws except where it enacts them into law through domestic legislation. Saudi Arabian Riyal (SAR) is the national currency. Arabic is the official language, though English is increasing in recognition.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Only Saudi registered entities may hire employees, locals or expatriates in the KSA. Non-GCC employees must have a sponsor for immigration purposes.

An employer must set up local payroll in Saudi Arabia.

PRE-HIRE CHECKS

Required

Immigration compliance for all non-GCC employees.

Permissible

Criminal and credit reference checks are only permissible for specific roles (eg, certain finance positions) and are subject to proportionality requirements. Reference and education checks are common and permissible.

IMMIGRATION

GCC nationals can work in all the GCC states freely without the need for work visas. Employing non-GCC nationals requires a special type of visa issued by the employer who will become the sponsor of the non-GCC employee for all immigration purposes. Employers should be aware of the strict rules relating to the proportion of Saudi and non-GCC employees that may be employed under the naturalization (Nitiqat) rules depending on the size of the business and sector.
HIRING OPTIONS

Employee

Indefinite, fixed-term, full-time or part-time.

Incidental work – that is, work that is not considered by its nature to be part of the usual activities of an employer and whose execution does not require more than 90 days – is also a valid arrangement and accrues the same rights and incurs the same responsibilities as any of the arrangements above.

Seasonal work is work that is only confined to specific, local occasions (eg, Ramadan, Eid Al-Fitr or National Day). It accrues the same rights and incurs the same responsibilities as the arrangements above.

It is important to note that, with respect to non-Saudis, all employment contracts are deemed to be for a fixed term. If the employment contract itself does not specify a definite term, the term will be the length of the employee’s work visa or work permit. Saudi employees automatically become engaged on indefinite-term contracts after 3 consecutive renewals of the employment contract or when the initial and the renewed term of employment reach 4 years. Part-time and fixed-term employees have the right not to be discriminated against due to their status.

Independent contractor

KSA Labor Law recognizes the validity of an independent contractor status so long that it is genuine and does not bear the indicia of an employment relationship (ie, no control from a party is exerted over the other with respect to performance in furtherance of the former’s interests in exchange for recurring – especially fixed – payments). Hence, engagement may be subject to misclassification exposure.

Agency worker

Subject to following the legal immigration rules for non-Saudis, agency workers are permissible and have the right to equal treatment to employees in relation to pay and other benefits terms.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

The Labor Law clearly states that the employment contract must be in writing.

From a procedural perspective, employment contracts are required for all non-GCC national employees to obtain their visas. Two copies of the employment contract should be made – 1 copy to be held by each party.

The contract must follow a template issued by the Ministry of Human Resource and Social Development (HRSD or the Ministry) which contains a minimum of the name of the employer and registered address; the name, nationality and address of the employee; identification of the employee (ie, national identity card numbers for nationals or foreign passport numbers for non-nationals); the employee’s salary and any allowances; a description of the employee’s duties; identification of the place where the work will be performed; the date of appointment and commencement of contract; length of the contract, if applicable; annual leaves and general leaves policy (eg,
maternity and compassionate leaves); benefits and resignation rules; termination events (ie, summary and constructive dismissal); governing law and forum (which must be the KSA); and rules pertaining to employee’s conduct, among others.

Both parties may incorporate additional conditions and terms that do not contradict the provisions of the Labor Law.

**Probationary periods**

A probationary period of up to 90 days may be agreed upon for any new employee. The probationary period may be extended, subject to the employee’s written consent, but cannot exceed 180 days. During this probationary period, both parties – unless such option is restricted to 1 of them – may terminate the contract for any or no reason, and the employee has no right to contest the termination or to require the employer to re-instate them, nor any right to end-of-service gratuity (EOSG). The probationary period and its term must be included in the contract. An employee may be made to serve only 1 probationary period for the same job position, unless the parties agree otherwise, where the second probationary period is for a different position or 6 months minimum have passed since the end of the previous employment relationship.

**Policies**

Under the Labor Law, employers must have in place a set of work regulations, which must be prominently displayed in the workplace. Such regulations must be in Arabic and should generally follow HRSD’s standard form template. The Ministry regulations are extensive and include provisions with respect to various aspects of work, including health and safety as well as disciplinary and grievance procedures.

Employers may include additional provisions in the regulations, provided they are in line with the Labor Law. Any additional provisions must be approved by the Ministry, which can take up to 60 days to approve and must be issued through a licensed attorney.

**Third-party approval**

No requirement to lodge employment contracts or policies with, or get approval from, any third party other than HRSD.

**LANGUAGE REQUIREMENTS**

Arabic is the prevailing language in KSA, though a contract may be established using another language. It is common practice in the KSA to produce a bilingual contract with the Arabic and English texts written in 1 document. In case of a labor dispute, all proceedings will be conducted in Arabic, and all documents, including the employment contract, must be submitted in Arabic. Even if the parties specify otherwise, the Arabic text will always prevail. English may be used for interpretation purposes where ambiguity in Arabic exists, though an administrative official or judge is not obligated to do so.

**MINIMUM EMPLOYMENT RIGHTS**

Employees entitled to minimum employment rights
All.

Working hours

Employees may be required to work a maximum of 8 hours per day or 48 hours per week. There are exceptions for those employed in trade, hotels, catering, security and similar jobs where the working hours may be increased to a maximum of 9 hours per day. For Muslims, the workday during Ramadan cannot exceed 6 hours per day, or the work week cannot exceed 36 hours. There are particular requirements in relation to the hours that women can work and the industries they can work in. For example, women cannot work at night for a period exceeding 11 hours or be made to undertake dangerous work roles.

Overtime

Overtime is to be paid at the rate of the employee’s wage plus 50 percent of their basic wage for an hour. Employees who hold a senior, supervisory or managerial position are not entitled to paid overtime.

Wages

There is generally no minimum wage for Saudi employees; however, in order to fulfill the Saudization requirements, a Saudi employee will be fully counted if their wage is SAR4,000 per month or above; otherwise, the employee will be counted as less than 1. Further, there are specific Saudized jobs and professions for which HRSD has set a minimum wage for Saudi nationals, such as engineering and accounting roles.

Vacation

An employee is entitled to 21 days of annual leave. Salaries must be paid prior to the employee taking their vacation. After 5 years of employment, the employee is entitled to 30 days of annual leave per year.

Sick leave & pay

An employee with a proven illness which requires the submission of satisfactory medical evidence shall be paid in full for sick leave for the first 30 days, then 75 percent of wages for the next 60 days. The employer is not required to pay the employee after 90 days of absence.

Where sickness is due to work conditions, an employee cannot be terminated within a year from the diagnosis and is to be paid fully for the first 60 days and then 75 percent for the remainder of the year, in addition to having all medical expenses funded by the employer.

Maternity/parental leave & pay

Women are entitled to fully paid maternity leave of 10 weeks commencing a maximum of 4 weeks before giving birth and 6 weeks thereafter. Paternal leave is 3 days, fully paid.

DISCRIMINATION

Generally, there may be no discrimination in terms and conditions of employment (eg, as to leaves or EOSG). However, aside from the new rules below, there are few specific anti-discrimination or harassment laws. Some of the terms of the Labor Law are specific to expatriates. Provisions concerning foreign recruitment, repatriation and
related matters do not apply to Saudi nationals. There are also some specific rules for female employees.

In June 2018, new anti-harassment laws took effect and provide that each private or public sector employer is required to take appropriate measures to prevent harassment in the workplace. This requires employers to follow certain procedures as stated in the law (ie, to have clear guidance and processes related to harassment complaints, and to have disciplinary procedures for harassment complaints, to confirm their validity and ensure their confidentiality).

Further, employers are required to investigate any breaches of their anti-harassment policies and the anti-harassment law, and they must not interfere with the affected employee’s right to raise a complaint to the authorities regarding harassment. While the law is silent on how to publish these procedures and policies, employers must ensure their employees are aware of the relevant information.

**BENEFITS & PENSIONS**

Medical insurance is required for all employees, their male dependents under the age of 25 and their female dependents until they marry or until their sponsorship is transferred.

Pension is only payable for Saudi and GCC nationals. Pension is paid to the General Organisation for Social Insurance (GOSI). The total cost of GOSI insurance for Saudi nationals is 22 percent, of which 10 percent is paid by the employee and the remaining 12 percent is borne by the employer. All employees additionally receive an EOSG on termination. However, where a GCC nationals is working in the KSA, the applicable contribution is the rate which would have been imposed by the GCC State where the individual holds nationality.

**DATA PRIVACY**

Transfer of employee data outside of the KSA is not regulated under Saudi law. However, general Shariah principles provide for personal data protection rules which imply that employers should include provisions in employment contracts where the employee’s consent is required for the employer to use or disclose the employee’s data to third parties, to the extent that such disclosures may be required.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

If the ownership of a company is transferred to a new owner, or a change takes place in its legal form through merger, partition or otherwise, the employment contracts shall remain in force, and service shall be deemed continuous. As for the employees’ rights accrued for the period prior to the change, such as wages or unrealized EOSG on the date of transfer of ownership, the predecessor and the successor shall be jointly liable.

However, in the case of an asset sale, employees generally transfer through termination and rehire, but the predecessor and the successor may agree to transfer all the previous rights of the employee to the new owner with the written consent of the employee. If the employee disapproves, they may request the termination of their contract and collect their dues from the predecessor.

**EMPLOYEE REPRESENTATION**
Labor unions are illegal in Saudi Arabia. Workers’ committees and similar organizations are also not permitted. Instead, HRSD and the Labor Courts have jurisdiction over safeguarding employment relations in the KSA. However, the Ministry is in the process of establishing the general union of Saudi workers, which will include all Saudi employees. In general, these Ministry labor unions are allowed for entities employing 100 or more Saudi employees.

**TERMINATION**

**Grounds**

If a fair process has been followed, termination is permissible on the grounds stated in the Labor Law – for example, misconduct, force majeure, constructive dismissal, winding up the business or parts of the entities activities, retirement and certain other substantial reasons, as well as the written consent of both parties.

Any termination that occurs outside of what is permissible by law and/or without following a fair process (i.e., termination for redundancy without proper economic reasons) is considered unjustified termination, and the employer shall be required to compensate the employee accordingly.

**Employees subject to termination laws**

All.

**Restricted or prohibited terminations**

Termination may not be based on an employee’s illness if the employee has not exhausted their sickness days, nor can the employee be provided with a termination notice during the statutory sick leave.

Further, no termination notice may be served upon an employee where the employee is on mutually agreed upon leave, compassionate leave or maternity leave, among others (i.e., statutory/contractual leaves).

**Third-party approval for termination/termination documents**

Not required.

**Mass layoff rules**

According to the Labor Law, the concept of redundancy is recognized provided that business is either closing down entirely or is terminating a particular activity. Prior to this, Saudi law was silent on the issue. There are still risks, however, that termination may be deemed to be for an invalid reason in certain circumstances.

Collective redundancy of Saudi national employees is generally prohibited under the Saudi Labor Law in circumstances other than the permanent closure of the business or the declaration of bankruptcy. In all other cases, where a company has 50 or more employees, it must notify the pertinent labor office no later than 60 days before proceeding with the termination and provide a full list of the jobs being removed and all nationalities of those involved.
Notice

If the contract is for an indefinite term, either party may terminate it for a valid reason, to be specified in a written notice to be served to the other party at least 60 days prior to the termination date, if the employee is paid monthly, and not less than 30 days for others.

For fixed-term contracts, the employment terminates once the fixed term has expired. Both parties may agree on any notice period under a fixed-term contract, provided it is reasonable.

If termination is sought for an indefinite-term contract, but it did not follow the proper procedural and substantive guidelines and a specific amount of damages has not been agreed upon in the employment contract, then the party who has suffered an unjustified termination is entitled to compensation equal to 15 days of employee wages per year of service.

If termination is sought prior to the expiry of a fixed-term contract for an invalid reason and the parties did not agree on the compensation amount in the employment contract, compensation equals all wages for the duration of the remaining period of the contract. The last wage received by the employee shall serve as the basis for estimating the compensation.

In the cases of both indefinite and fixed-term contracts, the compensation amount shall not be less than 2 months’ wages.

Statutory right to pay in lieu of notice or garden leave

Payment in lieu of notice and garden leave are both permissible.

Severance

EOSG is not payable before the end of the employment relationship. If the employer ends the employment, the benefit is calculated by adding ½ month’s wage for each of the first 5 years and 1 month’s wage for each of the subsequent years. For fractions of a year, the employee is entitled to proportionate EOSG. EOSG is calculated on the basis of the employee’s last salary.

If the employee resigns, they are entitled to 1/3 of the award after service of not less than 2 consecutive years and not more than 5 years; to 2/3 if their service is in excess of 5 successive years, but less than 10 years; and to the full award if their service amounts to 10 or more years.

If an employee is called to military service or cannot work because of force majeure, they are entitled to EOSG. Female employees are entitled to EOSG if they resign within 6 months of marriage or within 3 months of childbirth.

POST-TERMINATION RESTRAINTS

Restraints that protect the employer’s legitimate business interests may be enforced if reasonable.

Non-competes
Non-compete clauses are honored as long as they are in writing and specified in terms of place, duration (i.e., no longer than 2 years) and type of work. If there is no written agreement, or an express non-compete clause is not included in an employment contract, the law will not impose any restrictions.

**Customer non-solicits**

Permissible in narrow circumstances.

**Employee non-solicits**

Permissible.

**WAIVERS**

Employees cannot waive statutory rights under the Saudi Labor Law. Waivers of contractual rights require written consent. Failure to assert a right does not constitute waiver by conduct under Shariah principles (i.e., rights are not forfeited unless expressly waived).

**REMEDIES**

**Discrimination**

There is now a prohibition against discrimination on the basis of gender, age, disability, or any form of discrimination during recruitment or the employment period. The penalty for discrimination in the recruitment process – and during employment – is SAR20,000 per violation.

**Unfair dismissal**

If the contract is terminated for an invalid reason, the employee shall be entitled to indemnity as stated above. An employee may no longer ask to be re-instated.

**Failure to inform & consult**

Not applicable for this jurisdiction.

**CRIMINAL SANCTIONS**

Not generally a concern under Saudi Labor Law.
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SINGAPORE

LEGAL SYSTEM, CURRENCY, LANGUAGE

Common law. The official currency is the Singapore dollar (SGD). The official languages are English, Chinese, Malay and Tamil. English is the main language of law and business.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign company generally cannot carry on business in Singapore without registering a subsidiary, branch or representative office. "Carrying on business," as defined under the Companies Act (Cap. 50) of Singapore, includes the administration, management or otherwise dealing with property situated in Singapore as an agent, legal personal representative or a trustee, whether by employees or agents or otherwise, and does not exclude activities carried on without a view to any profit. There are some exceptions to this. For example, purely holding directors’ or shareholders’ meetings, effecting sales through an independent contractor, investing in funds or holding property, or if the foreign company carries on such other activity as the Minister may prescribe do not amount to "carrying on business."

Payroll should be set up to comply with the Employment Act (Cap. 91) of Singapore (EA); Central Provident Fund, under the Central Provident Fund Act (Cap. 36) of Singapore; and tax obligations. Further, the EA additionally requires itemized payslips to be provided to all employees covered under the EA and requires maintenance of certain employee records – including salary records which have the same requirements as the itemized payslips. Employers also have income tax withholding obligations with respect to foreign employees upon their termination.

PRE-HIRE CHECKS

Required

Immigration checks, to ensure that the relevant work pass required is obtained for the prospective candidate.

Permissible

Offers of employment are often made subject to:

- The prospective candidate having obtained the relevant work pass and the employer satisfying the
advertising requirements under the Fair Consideration Framework (FCF) and independently determining that the candidate is the best candidate out of all the applicants;

- Where necessary, the obtaining of satisfactory references; and

- When appropriate, background and criminal record checks.

Employers may also require the prospective candidate to undergo a medical examination and produce evidence of qualifications.

Pre-hiring checks must comply with Singapore’s Personal Data Protection Act 2012 (No. 26 of 2012) (PDPA). Generally, employers are required to at least notify applicants of the purposes for which their personal data is being used in connection with the management and termination of employment, and obtain their consent where collecting, using or disclosing their personal data. However, relevant exceptions to the PDPA notification and consent requirements include where the information is publicly available and where the information collected is for evaluative purposes (eg, for the purposes of evaluating employee suitability for the role) or for investigative purposes. In particular, there is no requirement under the law to ask for personal identification (NRIC) numbers for the purpose of job applications, although the employer would be required to know if an employee is holding an NRIC in order to determine if a work pass is required.

**IMMIGRATION**

Foreign nationals (ie, non-Singapore citizens or permanent residents) who wish to live and work in Singapore must obtain a valid work pass. There are several types of work pass which are administered and issued by the Ministry of Manpower (Employment Pass, S Pass and various Work Permits). The type of work pass required depends on the applicant’s qualifications and skill-level, and on the nature of employment sought.

**HIRING OPTIONS**

**Employee**

The EA is the primary statute regulating the relationship of employees and employers in Singapore. Coverage by the EA is dependent on whether the individual in question falls under the definition of “employee” in the EA. The definition covers every employee who is under a contract of service with an employer, with the exception of seafarers, domestic servants and certain government employees (EA Employees). The second category of employees comprises EA Employees who are: (i) not workmen earning basic monthly salaries of up to SGD2,600 per month; and (ii) workmen earning basic monthly salaries of up to SGD4,500 a month, but in each case this does not include any persons who are employed in a managerial or an executive position, regardless of their basic monthly salary (Part IV EA Employees). Part IV EA Employees are granted further benefits under Part IV of the EA including with respect to working hours, rest days and overtime.

Employees can be hired on a full-time, part-time or fixed-term basis.

**Independent contractor**

Independent contractors may be engaged, but the Singapore Courts and the Ministry of Manpower will look at the
substance of the relationship to determine if the individual is, in fact, an employee and merely labeling or classifying an individual as an independent contractor is insufficient.

**Agency worker**

Agency workers may be engaged if they are Singapore citizens or permanent residents.

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**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

All employers are required to issue key employment terms (KETs) in writing, as well as itemized payslips, to EA Employees who are hired after April 1, 2016 and who will be employed for a continuous period of 14 days or more. The KETs must include:

- Full name of employer (and employer’s trade name if different from full name of the employer)
- Full name of employee
- Job title, description of main duties and responsibilities
- Start date of employment
- Duration of employment (if the employee is on fixed-term contract)
- Working arrangements, such as:
  - Daily working hours (eg, 8:30am to 6:00pm)
  - Number of working days per week (eg, 6 hours) and
  - Rest days (eg, Saturday)
- Salary period
- Basic salary – for hourly, daily or piece-rated workers, employers should also indicate the basic rate of pay (eg, $X per hour, day or piece)
- Fixed allowances
- Fixed deductions
- Overtime payment period (if different from salary period) and overtime rate of pay
- Any other salary-related component such as any bonus or other monetary incentive (if applicable)
• Types of leave such as annual leave, outpatient sick leave, hospitalization leave, maternity leave, paternity leave and childcare leave

• Other medical benefits such as insurance, medical benefits and dental benefits

• Probation period (if applicable) and

• Notice period for dismissal by the employer or termination of employment contract by the employee, as the case may be.

KETs should be provided to EA Employees within 14 days from the start of employment and may be in soft or hard copy. Common KETs which are not specific to individual employees, such as leave policy and medical benefits, may be provided within an employee handbook or on the company intranet, so long as the information is easily accessible to workers and are also provided within 14 days from the start of employment. If all required KETs are stated in the written employment contract, the employer need not issue additional documents. While employees are not required to sign off on KETs, it is in the interest of the employer to obtain acknowledgement from the employees that the KETs have been issued.

Other than as set out above, there are no legal requirements for employers to have employment contracts in writing with employees, and there are no formalities that need to be complied with, although written contracts are recommended. The employment contracts of part-time employees (i.e., employees who are contracted to work for less than 35 hours a week) must specify their hourly basic rate of pay, hourly gross rate of pay (i.e., the hourly basic rate plus allowances), number of working hours per day or per week and number of working days per week or per month (among other things). KETs should also be issued to part-time employees, so long as they are covered under the EA, employed on or after April 1, 2016 and employed under a contract of service for a continuous period of 2 weeks or longer.

A failure to comply with the requirement to provide KETs will be penalized as a civil contravention of the EA, which will attract administrative penalties and could impact the employer’s ability to apply for work passes in the future.

Employee records, with the information as prescribed by the Employment (Employment Records, Key Employment Terms and Pay Slips) Regulations 2016 must be maintained for all EA Employees.

Probationary periods

The EA does not have any clauses specifically pertaining to the appropriate probation period for employees. As a common practice, employees may be asked to serve a probation period of 3 to 6 months.

Policies

EA Employees cannot have terms and conditions worse than those prescribed under the EA. Certain terms may be implied into an employment contract by operation of law or by custom and practice.

Third-party approval

Generally, there is no requirement to lodge employment contracts or policies with, or get approval from, any third party before an employment contract is valid, subject to work pass advertising requirements and approvals.
LANGUAGE REQUIREMENTS

No specific requirements to be complied with, though contracts are generally in English.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

Employees’ rights under law depend on whether they are EA Employees or Part IV EA Employees.

Generally, the minimum entitlements under the EA apply to EA Employees. However, matters such as hours of work, overtime and rest days are statutorily prescribed for Part IV EA Employees only. Employers are free to provide better contractual terms – above and beyond these minimum obligations – to their employees. However, terms which are worse than the minimum obligations stipulated under the EA for the EA Employees will be invalid and unenforceable.

Working hours

Rules relating to working hours only apply to Part IV EA Employees, regardless of whether the employees are shift or non-shift workers.

For shift workers, the hours of work must not exceed an average of 44 hours per week over any continuous period of 3 weeks, subject to a maximum of 12 hours per day.

For non-shift workers working more than 5 days per week, the hours of work should generally not exceed more than 8 hours per day or 44 hours per week. Where a non-shift worker works 5 days or less per week, the agreed hours of work must not exceed 9 hours per day or 44 hours per week. A non-shift worker may work up to 12 hours a day (and not exceeding an average of 44 hours over any 3 continuous weeks) if they agree to do so in writing, have the relevant provisions of the EA explained and are informed of their daily working hours, number of working days in each week and weekly rest day.

For other working arrangements – for example, if a Part IV EA Employee works less than 44 hours every alternate week – the hours of work are up to 48 hours a week, but capped at 88 hours in any continuous 2-week period.

A Part IV EA Employee is not allowed to work for more than 12 hours in a day, inclusive of overtime work, except in prescribed circumstances.

Overtime

With some exceptions, all work done in excess of the normal hours of work, excluding breaks (ie, 8 hours in 1 day or 44 hours per week), is considered overtime, for which a Part IV EA Employee must be paid at least 1.5 times their basic hourly rate. Unless employers successfully apply for and obtain an exemption for more than 72 hours of overtime work by employees in a month, the maximum permitted overtime is 72 hours per month. Rules relating to overtime only apply to Part IV EA Employees.

In terms of overtime pay, where a Part IV EA Employee is required to work on a rest day, the calculation of the overtime pay varies depending on the exact period of work on that rest day and whether the work is done at the
employer’s or employee’s request. For example, where the work is done at the employer’s request and the period of work exceeds the employee’s normal working hours, they must be paid:

- The basic rate of pay for 2 days’ work; and
- Not less than 1.5 times the hourly basic rate of pay for each hour or part thereof that exceeds their normal working hours.

In the event an EA Employee is required to work on any public holiday, they must be paid an extra day’s salary at the basic rate of pay in addition to the gross rate of pay for that day, or alternatively, by mutual agreement, an EA Employee may be granted a public holiday in lieu or, for non-Part IV EA Employees, time off in lieu.

**Wages**

Singapore law does not generally have a minimum wage stipulation. Wages are a matter to be agreed between the parties. However, the Singaporean government has introduced a mandatory Progressive Wage Model (PWM) to help uplift low-wage workers in certain sectors. The PWM covers Singaporeans and Singapore permanent residents in the cleaning, security and landscape sectors, though the government has said it plans to extend the PWM to other sectors including retail, food services and waste management. Employers in these sectors are also encouraged to use these principles of progressive wage for their foreign employees.

Employers had to meet PWM requirements by the following dates:

- Cleaning sector: September 1, 2014 (note: wages increased for this sector as of July 1, 2017)
- Landscape sector: June 30, 2016 and

The wages of EA Employees may only be deducted for specific reasons as set out under the EA. In particular, deductions may be made with an EA Employee’s consent, although consent may be withdrawn at any time.

**Vacation**

An EA Employee who has worked for their employer for at least 3 months is entitled to 7 days’ paid annual leave for the first year of service. An additional day of leave for every subsequent 12 months of service will be provided, up to a maximum of 14 days. If the EA Employee has worked for their employer for at least 3 months but has not completed 12 months of continuous service in any year, the annual leave entitlement for that year is pro-rated based on the number of full months the EA Employee has worked in that year. This entitlement applies even if the EA Employee is still on probation, so long as they have worked for their employer for more than 3 months. Further, every employee in Singapore is entitled to be paid for each public holiday. There are presently 11 public holidays in Singapore each year, although additional public holidays may be gazetted.

**Sick leave & pay**

An EA Employee who has worked for their employer for at least 3 months is entitled to paid sick leave if the EA Employee has informed or tried to inform their employer within 48 hours of their absence, and if the sick leave is certified by a medical practitioner or a medical officer as required under the EA. The number of days of sick leave
is subject to the employee's service period as follows:

<table>
<thead>
<tr>
<th>Number of months of service completed</th>
<th>Paid outpatient non-hospitalization leave (days)</th>
<th>Paid hospitalization leave (days), inclusive of outpatient sick leave days</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>5</td>
<td>15</td>
</tr>
<tr>
<td>4</td>
<td>8</td>
<td>30</td>
</tr>
<tr>
<td>5</td>
<td>11</td>
<td>45</td>
</tr>
<tr>
<td>6 or thereafter</td>
<td>14</td>
<td>60</td>
</tr>
</tbody>
</table>

**Maternity/parental leave & pay**

Under the Child Development Co-Savings Act (Cap. 38A) of Singapore (CDCSA), any female employee in Singapore is entitled to government-paid maternity leave benefits if:

- The child is a Singapore citizen at the time of delivery and
- The employee has worked for the employer for at least 3 months immediately before the day of birth.

If the child is not a Singapore citizen at the time of delivery, a female employee may still qualify for government-paid maternity leave if she meets the eligibility criteria within 12 months of the child’s birth and she will (among other things) be eligible for the remaining maternity leave from the date she meets all criteria.

Eligible female employees are entitled to 16 weeks’ government-paid maternity leave. The 16 weeks of government-paid maternity leave may be consumed as a single continuous block, and mothers may start taking maternity leave up to 4 weeks before the date of delivery. Further, while the first 8 weeks must be taken as a continuous block, the last 8 weeks (9th to 16th week) of government-paid maternity leave may also be taken flexibly over a period of 12 months from the date of confinement, subject to mutual agreement between the employer and employee.

For the first and second confinements, employers must pay for the first 8 weeks and may be reimbursed by the government for the remaining 8 weeks. The full 16 weeks’ entitlement will be government-paid from the third confinement onwards. Government-paid maternity leave paid by the Singapore government is capped at
SGD10,000 per 4 weeks, including employer’s central provident fund (CPF) contributions.

Female EA Employees who do not qualify for maternity leave under the CDCSA may be entitled to maternity benefits under the EA instead, provided the eligibility criteria is met. An eligible female EA Employee is entitled to up to a total of 12 weeks’ maternity leave. Of the 12 weeks, generally, the female EA employee is only entitled to 8 weeks’ paid maternity leave if she has fewer than 2 children of her own and if she has served her employer for at least 3 months before the estimated delivery date. The remaining 4 weeks of maternity leave is unpaid. If the female EA employee has 2 or more living children at the time of birth, she is entitled to 12 weeks of unpaid maternity leave.

For both government-paid maternity leave under the CDCSA and maternity leave under the EA, the female employee must also comply with the requisite notice requirements. Failure to provide such notice without sufficient cause will entitle an employer to pay the employee only half her salary during the leave.

Working fathers (including adoptive fathers and those who are self-employed) are entitled to 2 weeks of government-paid paternity leave for all births. The leave must be used within 16 weeks commencing on the date of the child’s birth, provided the employee meets certain criteria. If needed, they may also work out an agreement with their employer to take the leave flexibly within 12 months from the birth of the child for 1 or more than 1 period, all of which in aggregate are equal in duration to twice the employee’s weekly index (as prescribed within the CDCSA) or 12 days, whichever is lower. Subject to certain eligibility criteria, a working father, including one who is self-employed, is entitled to share up to 4 weeks of his wife’s 16 weeks of government-paid maternity leave, subject to his wife’s agreement.

Under the CDCSA, all employees, including fathers, employed for at least 3 months (including non-EA Employees) are generally entitled to up to 6 days of paid childcare leave per year where the child is a Singaporean citizen and below the age of 7. The first 3 days are paid by the employer, and the remaining 3 days of leave are paid by the Singapore government. Payments are capped at SGD500 per day, including CPF contributions. An EA Employee whose child is not a Singaporean citizen is entitled to 2 days of childcare leave under the EA.

The CDCSA also provides for adoption leave, extended childcare leave and unpaid infant care leave, if certain eligibility criteria are met.

**DISCRIMINATION**

Singapore does not have any legislation which expressly prohibits workplace discrimination. While the Constitution provides that all persons are entitled to the equal protection of the law and that there shall be no discrimination based on religion, race, descent or place of birth, successful challenges on constitutional grounds are rare.

The main type of employment legislation that deals with the issue of discrimination concerns age discrimination. The Retirement and Re-employment Act (Cap. 274A) of Singapore (RRA) applies to all employees and prohibits the dismissal of any employee who is below the current retirement age of 62 (increasing to 63 effective 1 July 2022) on the grounds of age, notwithstanding any agreement to the contrary. Employees have a statutory right to be offered re-employment between the age of 62 (or the age stipulated in the employment contract, if higher) and 67 (increasing to 68 on 1 July 2022) provided they have satisfactory work performance and are medically fit to continue working. If the employee meets the criteria, the employer must offer the employee re-employment unless it is unable to find a suitable vacancy through redeployment to another part of the business – and in which
case the employee has a right to receive an employment assistance payment (see further comments under the Severance section below).

In addition, pregnant employees under the EA may not be dismissed solely for being absent from work in accordance with the maternity leave provisions set out in the EA or in the CDCSA, although this is not characterized as discrimination per se.

The Enlistment Act (Cap. 93) of Singapore (Enlistment Act) generally prohibits employers from dismissing employees solely or mainly by reason of being called up for national service.

The Tripartite Guidelines on Fair Employment Practices (TGFEP), issued by the Tripartite Alliance for Fair Employment Practices (TAFEP), are a set of best practice guidelines that encourage fair treatment of employees. If an individual encounters workplace discrimination in breach of the TGFEP, they may contact TAFEP, which may first engage informally with the employer to assess if the complaint is meritorious. The TAFEP may refer cases to the Ministry of Manpower (MOM) where the employer is recalcitrant or unresponsive, and the MOM may impose certain administrative sanctions against errant employers (eg, curtailing work pass applications and privileges). The TAFEP has also introduced the FCF to specifically target discrimination against locals. Under the FCF, employers submitting Employment Pass and S Pass applications must first advertise on MyCareersFuture and fairly consider all candidates. Further, the MOM proactively identifies employers with indications of discriminatory hiring practices and places them on the FCF Watchlist for further scrutiny. The MOM is additionally concerned about employers with an exceptionally high percentage of foreign PMETs compared to industry peers, or high concentrations of single nationalities, as these are indicators of possible discriminatory hiring practices.

In 2021, the Singapore government announced that it plans to introduce workplace discrimination legislation by enshrining into law some or all of the principles currently contained in the TGFEP. A new workplace discrimination tribunal will also be established to resolve workplace discrimination disputes. A draft bill is expected to be announced in the first half of 2022, with the legislation likely to pass by the end of the year.

**BENEFITS & PENSIONS**

For employees who are Singapore citizens or permanent residents, the employer is required to make mandatory employer contributions to the CPF. Employees are also required to make mandatory employee contributions to the CPF. Contributions are based on the prevailing rates under the relevant legislation.

Benefits offered to an employee will usually depend upon their level of seniority within the organization. EA Employees are entitled to minimum standards of benefits under the applicable part of the EA. Those at the managerial and/or executive level are likely to be offered additional benefits, which are usually contractually provided for. Many organizations provide for leave pay, sick leave pay and notice requirements in excess of statutory entitlement to a wide range of employees.

**DATA PRIVACY**

Generally, employers are required to at least notify applicants of the purposes for which their personal data is being used in connection with the management and termination of employment and/or obtain their consent where collecting, using or disclosing their personal data.
However, under the PDPA, an employer is permitted to collect, use and disclose the employees' personal data for purposes of managing or terminating an employment relationship without the need to seek employee's consent, so long as the employee has been notified of the purposes of such collection, use and disclosure and/or provides their consent prior to such collection, use and disclosure. Further, employers may collect, use and disclose personal data without obtaining the employees' consent or notifying them where it is necessary for evaluative purposes, including the determination of the suitability or eligibility of an individual to whom the data relates for employment, continuance in employment or promotion.

Note that employers must seek consent for purposes that are not related to, or for the collection of personal data that is not relevant to, the management or termination of an employment relationship or that are not relevant for evaluative purposes, unless any other exception under the PDPA applies.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Under the EA, EA Employees are automatically transferred if an undertaking or part thereof is transferred from one person to another as a going concern. There are notification and consultation requirements required under the EA relating to the automatic transfer of EA Employees. Non-EA Employees do not transfer automatically and instead must have their employment contractually terminated by the transferor on a business transfer, after which they may then be rehired by the transferee or have their contracts novated.

EMPLOYEE REPRESENTATION

Trade unions are administered by, inter alia, the Industrial Relations Act (Cap. 136) of Singapore (IRA), the Trade Disputes Act (Cap. 331) of Singapore (TDA) and the Trade Unions Act (Cap. 333) of Singapore.

The IRA regulates relations between employers and employees and provides the legal framework to prevent and settle trade disputes by collective bargaining, conciliation and industrial arbitration. Individual disputes fit within the definition of trade disputes under the TDA. The TDA defines illegal industrial action and illegal lock-outs and provides penalties for the same.

Collective agreements are common in Singapore within specific industries, such as transport and manufacturing. Even where a trade union has been statutorily recognized but no formal collective agreement has yet been entered into, disputes may potentially still be referred to the Industrial Arbitration Court and decided in accordance with principles of equity and fairness (rather than strict contractual principles).

TERMINATION

Grounds

There is no legal requirement to state the reason for termination, so long as termination is effected in accordance with the express termination provisions of the employment contract. However, if an EA Employee is dismissed without “just cause or excuse,” they may lodge a wrongful dismissal claim with the Employment Claims Tribunal (ECT). EA Employees in a managerial or executive position who have been dismissed with notice (or payment in lieu) must also have worked for their employer for at least 6 months in order to be eligible to bring a claim. The Tripartite Guidelines on Wrongful Dismissal provide examples of dismissals that will be considered to be wrongful, including discrimination, depriving an employee of benefits or entitlements they would otherwise have earned,
punishing an employee for exercising their employment rights and providing a false reason for termination, among others.

In addition, an employer has a right to summarily dismiss an employee in exceptional circumstances, including misconduct, provided the employer has first conducted a "due inquiry". It is prudent to set out in the employment contract the circumstances and grounds on which the employee may be summarily dismissed. Suspension is also only possible for EA Employees for the purposes of a due inquiry for a maximum period of 1 week, unless otherwise agreed by the Commissioner, and provided the employee is given at least half pay with the unpaid half being restored if the due inquiry does not find any misconduct on the employee’s part.

Employees subject to termination laws

The EA is the main piece of legislation governing termination of employment of EA Employees. For those employees not covered by the EA (which is rare), termination is governed by the employment contract between the employer and the employee.

Restricted or prohibited terminations

There are restrictions against terminating the employment of female employees on maternity leave, and employees who attain the minimum retirement age but remain eligible for re-employment under the conditions stated in the RRA or on the grounds purely of old age. There is also legislation governing the termination of employees in respect of their trade union activities under the IRA, employees in respect of their national service duties under the Enlistment Act and employees in respect of health and safety reporting or investigations under the Workplace Safety and Health Act (Cap. 354A) of Singapore.

Third-party approval for termination/termination documents

None required.

Mass layoff rules

There are no laws prohibiting mass layoffs, but these are subject to any restrictions under the individual contracts of employment and collective agreements, if any. The Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment (Advisory) issued by the MOM provides guidance on redundancy situations and, while not legally binding, is commonly followed by employers. In October 2020, the Advisory was updated to encourage employers who are contemplating retrenchments to first take a long-term view of their manpower needs and the need to maintain a “strong Singaporean core.” Following this, retrenchments should generally not result in a reduced proportion of local employees.

Any redundancy exercise should be implemented in consultation with a trade union (if the company is unionized, including if a union has been statutorily recognized).

When undertaking a redundancy exercise, employers who employ at least 10 employees must make mandatory notifications in the prescribed form to the MOM. While there is no legal definition of redundancy in Singapore, in this context, retrenchments are taken to mean dismissal on grounds of redundancy or by reason of any reorganization of the employer’s profession, business, trade or work. This requirement to make mandatory notification applies to permanent employees, as well as contract workers with full contract terms of at least 6 months. The MOM must also be notified if employers implement cost-saving measures that affect employees’ salaries.
Employers are obliged to provide information to the Commissioner of Labor in relation to the retrenchment of an employee, if so requested. There will be penalties for non-compliance.

Notice

Employment contracts typically specify a required notice period for termination. For an EA Employee, the length of such notice must be the same for both employer and employee and is determined by the notice provision specified in the terms of the employment contract. In the absence of a specified term, where the employee is an EA Employee, the required notice of termination is dependent upon the employee’s length of employment (from 1 day for those employed for less than 26 weeks to 4 weeks for those employed for 5 years or more). A non-EA Employee is not subject to the statutory minimum notice period, and instead is entitled to reasonable notice (usually not less than the statutory minimum notice period) if their employment contract does not set out an express notice period.

Statutory right to pay in lieu of notice or garden leave

Even if not made express in the employment contract, it is possible for either the employer or the employee to make a payment in lieu of notice for EA Employees — a sum equal to the amount of salary which would have been earned by the employee during the required period of notice. For non-EA Employees, the employer or the non-EA Employee may only terminate the employment contracts by paying salary in lieu of notice if there is an express contractual right to do so, or unless there is mutual consent between the parties.

Employees serving their notice period before termination may be placed on garden leave if expressly set out in their employment contract and, if not, only if they provide their express consent. During this time, they should continue to be treated as an employee and receive their full contractual benefits up to their last day with the employer.

Severance

Unless the employment terms expressly provide that severance, retrenchment or redundancy benefits are payable, there is no obligation on the part of the employer to pay non-Part IV EA Employees such benefits, and any retrenchment benefits are to be agreed between the employer and the employee. This is a matter of contract, company policy, subsequent negotiations and financial position, or what has been agreed collectively. When dealing with unionized employees, employers are obliged to negotiate in good faith with the union and may not have absolute discretion to determine the terms of the retrenchment benefits.

Part IV EA Employees are, however, entitled to request for retrenchment benefits if they have worked for their employer for at least 2 years. The amount is subject to agreement between the employer and the Part IV EA Employee where there are no applicable contract, policy or other employment terms.

Pursuant to the Advisory, the MOM strongly encourages payment of retrenchment benefits ranging from a one-off lump sum to 2 weeks’ to 1 month’s salary per year of service depending on the financial position of the employer and taking into account industry norm. Employers who conduct retrenchment irresponsibly, such as an employer who is in a sound financial position but chooses not to provide any retrenchment benefit, may be denied future government support or have their work pass privileges suspended.

Employees who are eligible for re-employment under the RRA may also have a right to receive an employment assistance payment of 3.5 months’ salary at the gross rate of pay (subject to a minimum of SGD5,500 and a
maximum of SGD13,000, which decreases progressively as the termination date falls after the retirement age).

**POST-TERMINATION RESTRAINTS**

Covenants in restraint of trade, such as non-competes and non-solicits, are *prima facie* void in Singapore. They are only considered enforceable if they can be shown to be reasonable, such as by proving that they are required to protect the legitimate proprietary interests of the employer, and go no further than is reasonably necessary to protect those interests (especially in terms of duration, scope and geographic coverage). The courts have recognized 3 legitimate proprietary interests thus far: an employer’s trade secrets and confidential information, the protection of trade connections and the maintenance of a stable trained workforce.

**WAIVERS**

A waiver must be clear, but may be either oral or written. A waiver need not be express, but may be inferred from a course of conduct.

**REMEDIES**

**Discrimination**

However, this may change if and when the Singapore government introduces workplace discrimination legislation, currently expected by the end of 2022 (see Discrimination above).

**Unfair dismissal**

If an EA Employee is dismissed without “just cause or excuse,” they may lodge a wrongful dismissal claim with the ECT. EA Employees in a managerial or executive position who have been dismissed with notice (or payment in lieu) must also have worked for their employer for at least 6 months in order to be eligible to bring a claim.

Employers and employees with salary and dismissal-related claims should first register their claims at the Tripartite Alliance for Dispute Management (TADM), which provides advisory and mediation services before claims may be heard at the ECT. Claims that cannot be resolved through mediation are issued with a claim referral certificate and referred to the ECT. The types of claims that may be heard by the ECT include:

- Statutory salary-related claims from all employees covered by the EA, RRA and CDCSA. This includes claims for unpaid salary, overtime pay, salary in lieu of notice, employment assistance payment and maternity benefits;
- Contractual salary-related claims by all EA Employees – for example, payment of allowances, bonuses, commissions, salary in lieu of notice and retrenchment benefits, provided that these are expressed in monetary terms in the contract; and
- Wrongful dismissal claims from all employees covered by the EA and CDCSA, including constructive dismissal claims.

The ECT may also hear claims for salary in lieu of notice for all employers. These claims must be filed within the
specified time period.

The claims limit is SGD30,000 per case for cases which go through mediation (whether through the Tripartite Mediation Framework) or mediation assisted by unions recognized by the IRA with union involvement, compared to SGD20,000 for all other claims.

Failure to inform & consult

There is generally no obligation on an employer to inform and/or consult the employee on matters related to their employment. This usually only arises in a business transfer situation or whether the employee is subject to a collective bargaining agreement as mentioned above.

In a business transfer situation, if the transferor fails to discharge their obligations under the EA to inform and consult EA Employees prior to the transfer, the employee may refer the matter to the Commissioner of Labor for adjudication, and the Commissioner is empowered to:

- Delay or prohibit the transfer of the employee concerned; and
- Order the transfer of the employee on such terms as the Commissioner considers just.

CRIMINAL SANCTIONS

Criminal sanctions include fines or imprisonment for offenses under the EA or other applicable statutes. Offenses under the EA include, but are not limited to, wrongful detention of an employee by the employer after a contract of services have been determined, obstructing an employee appearing before an inquiry held by the Commissioner, fraudulently inducing an employee to emigrate out of Singapore to work and failure to pay salary as stipulated.

Any director, manager, secretary or other officer of the company may also be charged with the same offense and punished upon conviction if it can be shown that the offense is committed with the consent or connivance of any act or default of such persons.

KEY CONTACTS

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View bio
SLOVAK REPUBLIC

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of the European Union (EU), so required to implement relevant EU directives. The official currency is the Euro (EUR). The official language is Slovak.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign company may engage employees without a local corporate presence. However, registrations with tax, social security and health insurance authorities are required for payroll purposes.

Employee earnings are subject to withholdings for:

- Tax purposes (19 to 25 percent)
- Contributions to social insurance (9.4 percent by the employee at a maximum of EUR 745.51 per month; 25.2 percent by the employer at a maximum of EUR 1,935.15 per month, plus the amount of accident insurance which amounts to 0.8 percent from the actual salary of the employee) and
- Health insurance (4 percent, 2 percent paid by the employee; 10 percent, 5 percent by the employer). The smaller percentages apply in the case of a disabled employee.

PRE-HIRE CHECKS

Required

Immigration compliance. Criminal record checks if integrity is taken into account based on the nature of the work or pursuant to special regulations (eg, public services).

A preventive work-related medical examination is required for the assessment of the medical fitness for work of a juvenile employee and certain categories of work.
Permissible

An employer may request that a previously employed person submits references and a certificate of employment. If an individual has not been previously employed, an employer may only request information relevant to the work to be carried out.

Reference and education checks are common and permissible with the candidate's consent.

**IMMIGRATION**

Free movement of employees for all countries of the EEA. An employer based in Slovakia who employs an EU citizen is obliged to inform the competent Office of Labor, Social Affairs and Family about the employment relationship.

In general, an employer based in Slovakia that wants to employ a third country national must inform the competent Office of Labor, Social Affairs and Family about the vacant position and intention to employ a third-country national. Only where the vacancy cannot be filled by a Slovak citizen or EU citizen, the Slovak employer may employ a third-country national. A residence permit for the purpose of employment is required.

**HIRING OPTIONS**

**Employee**

Indefinite, fixed-term, full-time or part-time. Part-time and fixed-term employees cannot be discriminated against due to their status.

**Independent contractor**

Independent contractors may be engaged by a company to provide independent services. However, the rights and obligations of independent contractors must be carefully agreed, and they cannot perform dependent work for the company, as the respective labor authorities could re-classify such a relationship as an employment relationship, which cannot be carried out under a commercial contract. This exposes a company to a high risk of being imposed with a fine in the case of such re-classification.

**Agency worker**

The temporary secondment of agency workers may be agreed for no more than 24 months. The working conditions, including wages and employment terms of agency workers must be equivalent to those of the user employer’s comparable employees.

The agency must hold a special permit granted by the Central Office of Labor, Social Affairs and Family.

**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

Employment must be set up on the basis of a written employment contract, and the employee must be provided
counterpart of the employment contract.

The employment contract must set out the material terms agreed between employer and employee, including:

- The type of work for which the employee is employed and a short description of the work
- The place of work (ie, municipality, part of the municipality or another designated place)
- The commencement date of the employment
- Wage terms, unless agreed in a collective agreement, and
- Payroll dates, working time, holiday entitlement and the length of notice period.

Probationary periods

A probationary period may be agreed in the employment contract for a maximum of 3 months, or for a maximum of 6 months in the case of senior managers (ie, those with responsibility for the direction of the company or who report directly to such a manager). The probationary period may not be extended. A probationary period cannot be agreed in the case of re-employment for a fixed-term period.

The probationary period must be agreed in writing. Otherwise, it is invalid.

Policies

An employer may issue internal workplace regulations. These may be subject to a previous agreement with the employee representatives. Otherwise, they may be invalid. Employees must be provably informed of internal policies.

Third-party approval

No requirement to lodge an employment contract with, or get approval from, any third party.

LANGUAGE REQUIREMENTS

Employment law-related documents must be in the Slovak language. Text in another language with identical content may be provided alongside the text in the Slovak language.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All.

Working hours
Working time during any 24-hour period must not exceed 8 hours. Working time should not exceed 40 hours per week.

Once a week, an employee must have uninterrupted rest time of 2 consecutive days, which must fall on Saturday and Sunday or Sunday and Monday, if possible taking into account the nature of the employer’s operations.

**Overtime**

Average weekly working time, including any overtime work, must not exceed 48 hours.

Overtime work must not exceed on average 8 hours per week within a period of not more than 4 consecutive months, unless the employer agrees with the employee representatives on a longer period, which must not exceed 12 consecutive months.

**Wages**

Wages cannot be lower than the minimum wage set forth by a special regulation.

The minimum wage rate for a role is partly based on the degree of difficulty of work. Different roles attract different minimum wage coefficients.

<table>
<thead>
<tr>
<th>Degree</th>
<th>Minimum wage coefficient</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1.0</td>
</tr>
<tr>
<td>2</td>
<td>1.2</td>
</tr>
<tr>
<td>3</td>
<td>1.4</td>
</tr>
</tbody>
</table>
For hourly paid employees, the minimum wage rate is calculated as $1/174$ from the minimum wage entitlement calculated for employees remunerated with monthly wage.

<table>
<thead>
<tr>
<th>Degree</th>
<th>Minimum wage coefficient</th>
<th>Hourly minimum wage rate in 2021 (EUR)</th>
<th>Hourly minimum wage rate in 2022 (EUR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1.0</td>
<td>3.580</td>
<td>3.713</td>
</tr>
<tr>
<td>2</td>
<td>1.2</td>
<td>4.247</td>
<td>4.379</td>
</tr>
<tr>
<td>3</td>
<td>1.4</td>
<td>4.914</td>
<td>5.046</td>
</tr>
<tr>
<td>4</td>
<td>1.6</td>
<td>5.580</td>
<td>5.713</td>
</tr>
</tbody>
</table>
For monthly paid employees, the changed calculation of minimum wage in 2022 results in the increase of the minimum wage to EUR23 for each degree of difficulty of work.

<table>
<thead>
<tr>
<th>Degree</th>
<th>Minimum wage coefficient</th>
<th>Minimum monthly wage in 2021 (EUR)</th>
<th>Minimum monthly wage in 2022 (EUR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1.0</td>
<td>623</td>
<td>646</td>
</tr>
<tr>
<td>2</td>
<td>1.2</td>
<td>739</td>
<td>762</td>
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<td>3</td>
<td>1.4</td>
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</tr>
<tr>
<td>4</td>
<td>1.6</td>
<td>971</td>
<td>994</td>
</tr>
<tr>
<td>5</td>
<td>1.8</td>
<td>1087</td>
<td>1110</td>
</tr>
</tbody>
</table>
In 2022, the minimum hourly wage is EUR3.713 per hour. The minimum monthly wage is EUR646 per calendar month.

Vacation

4 weeks' vacation per year. 5 weeks per year for any employee who reaches the age of 33 years before the end of the given calendar year or for any employee who cares for a child on a permanent basis.

Sick leave & pay

Maximum number of sick leave days is up to 7 days per calendar year.

Statutory sick leave and pay provisions allow for up to 10 days of employer-paid sick leave (ie, 0 to 3 days: paid at 25 percent of the daily assessment base; 4 to 10 days: paid at 55 percent of the daily assessment base) followed by sick allowance paid by the social insurance company (55 percent of the daily assessment base, paid from the 11th day until the 52nd week of illness).

Maternity/parental leave & pay

An employee is entitled to maternity or parental leave until the time the child reaches the age of 3, or the age of 6 if the child has a long-term adverse health condition.

An employee is entitled to paid maternity leave of 34 weeks. 37 weeks if the employee is a single parent. 43 weeks if an employee gives birth to or takes care of 2 or more children at the same time.

Maternity leave usually begins around 6 weeks before the expected date of birth but no earlier than 8 weeks prior to the childbirth.

From the beginning of maternity or parental leave, the social insurance company pays maternity or parental premium if the conditions for entitlement have been fulfilled by the employee.

DISCRIMINATION

Direct and indirect unlawful discrimination and harassment is prohibited on grounds of sex, marital status and family status, sexual orientation, race, skin color, language, age, adverse health condition or disability, genetic characteristics, belief, religion, political or other views, trade union activity, national or social origin, nationality or ethnicity, property, gender or any other status or due to the reporting of crime or other antisocial activity (ie, whistleblowers).
**BENEFITS & PENSIONS**

No benefits required above those covered by way of social insurance contributions. There is a state pension system provided by the government.

**DATA PRIVACY**

Covered by the national data protection laws and EU rules. Processing of personal data is generally unlawful except as allowed by the applicable legislation or based on consent of the individual. Special rules apply to data transfers outside the EEA.

In general, an employer may collect personal data about its employees which relates to their qualifications and professional experience, and other information which is relevant to the work carried out by the employees.

As of May 2018, Slovakia is subject to the General Data Protection Regulation (GDPR), the local introduced significant new obligations and onerous sanctions for breach of personal data rules. In specific cases, also Act No. 18/2018 Coll. on Personal Data Protection, as amended, applies.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

Automatic transfer of employment under the EU Acquired Rights Directive/Slovak Labor Code’s rules applies in case of a transfer of an economic unit (eg via sale of enterprise, or in certain cases via an asset deal).

Employees must receive detailed written information no later than 1 month prior to the anticipated transfer, and may object to the transfer. Duty to inform and consult with employee representatives applies. Significant restrictions on changing employment terms and conditions following a transfer apply. Any dismissal connected to the transfer will be deemed invalid; dismissals for other reasons are possible under the strict rules set forth by the Labor Code.

**EMPLOYEE REPRESENTATION**

Trade unions are prevalent in certain sectors (eg, public sector, health services and manufacturing). Many businesses have no trade union, works council or other employee representation. Works councils may operate in businesses with at least 50 employees. In businesses with at least 3 employees and no more than 50 employees, an employee trustee may be in place.

Where applicable, a works council or employee trustee is entitled to joint decision-making in the form of agreement or giving prior consent only insofar as the working conditions or employment terms for which joint decision-making with the works council or employee trustee as required are not already regulated by collective agreement.

**TERMINATION**

Grounds
Grounds for termination of employment by the employer are strictly determined by the Slovak Labor Code. In other cases, it is possible to terminate the employment only on the basis of a mutual termination agreement.

**Employees subject to termination laws**

All.

**Restricted or prohibited terminations**

An employer cannot give termination notice to an employee during a protected period – that is, when:

- An employee has been recognized as incapable of work due to illness or injury
- An employee has been summoned to carry out an extraordinary duty during a crisis situation
- An employee is released to undergo voluntary military training
- An employee is pregnant, or on maternity or parental leave
- An employee who is a single (or lone) parent has been taking care of a child below 3 years of age
- An employee has been released to pursue public office or
- An employee carrying out night work has been medically certified as incapable of night work.

**Third-party approval for termination/termination documents**

Termination of employment by termination notice or termination with immediate effect by the employer must be pre-negotiated with the employee representatives, otherwise it is invalid. In case of termination of a member of the employer’s employee representative body, the prior consent of the employee representatives is required.

An employer may provide a termination notice to a disabled employee only with the prior consent of the competent Office of Labor, Social Affairs and Family, otherwise the termination notice is invalid. Such consent is not required if notice is given to an employee who has reached the determined age for eligibility to old-age pension, or the employer is being wound-up or relocated, or there are reasons based on which the employer could terminate the employment with immediate effect or due to a less serious breach of work discipline.

**Mass layoff rules**

Information and consultation rules apply where at least 10 employees in a business with at least 20 up to 100 employees are to be terminated within 30 days. In businesses with 100 to 300 employees, the threshold is 10 percent of the number of the employees and, in a business with more than 300 employees, at least 30 employees.

The employer must negotiate the mass layoff with the employee representatives, inform the Office of Labor, Social Affairs and Family and provide a list of the employees to be terminated. After negotiation, the employer must deliver written information about the negotiation outcome to both the Office of Labor, Social Affairs and Family and the employee representatives.
Termination Notice

An employer may give termination notice to an employee only due to reasons explicitly stipulated by the Slovak Labor Code. The reasons for termination include, for example, winding up or relocation of the employer, redundancy of the employee, lack of medical fitness, failure to satisfy the requirements of the agreed work and dissatisfactory performance of work tasks.

The length of the notice period depends on the length of the employment and the termination reason and varies between 1 and 3 months.

Statutory right to pay in lieu of notice or garden leave

No statutory right to pay in lieu of notice or garden leave.

Severance

An employee whose employment is terminated by the employer by means of termination notice, for organizational reasons (e.g., redundancy, winding-up) or due to the employee’s health is entitled to severance pay amounting to 1 to 4 times their average monthly earnings, depending on the length of their employment.

Where the employment is terminated by mutual termination agreement for the same reasons as above, the employee is entitled to severance pay amounting to 1 to 5 times their average monthly earnings, depending on the length of their employment.

If an employee is terminated by termination notice or by mutual termination agreement due to a workplace injury, occupational disease or the threat of such disease, or if the maximum permissible exposure (e.g., to hazardous substances) in the workplace has been reached, they are entitled to severance pay in the amount of at least 10 times their average monthly earnings.

POST-TERMINATION RESTRAINTS

Non-competes

Where an employee may acquire information or knowledge that is not normally available and the use of which could cause substantial harm to the employer, the parties may agree in the employment contract that, for maximum 1 year after the termination of the employment, the employee shall not pursue any gainful activity that is competitive to the employer’s activity.

The employer must provide appropriate financial compensation to the employee in the amount of at least 50 percent of the employee’s average monthly earnings for each month of the commitment. The parties may agree in the employment contract on appropriate financial compensation which the employee shall pay in case of breach.
Customer non-solicits

Customer non-solicits are not regulated by the Slovak Labor Code. Therefore, their enforceability may be questionable. Furthermore, if agreed, they usually serve only as a deterrent. Soliciting of customers cannot be sanctioned (e.g., by a contractual penalty) as the Slovak Labor Code does not permit this.

Employee non-solicits

Employee non-solicits are not regulated by the Slovak Labor Code. Therefore, their enforceability may be questionable. Furthermore, if agreed, they usually serve only as a deterrent. Soliciting of employees cannot be sanctioned (e.g., by a contractual penalty) as the Slovak Labor Code does not permit this.

WAIVERS

Legally possible, except for waivers of rights prior to their existence. Such waivers shall be invalid.

REMEDIES

Discrimination

If the principle of equal treatment with respect to access to employment is violated by an employer, the affected individual will be entitled to seek that the person violating the principle refrains from such conduct and, where possible, rectifies the unlawful situation or provides reasonable financial compensation.

If reasonable financial compensation is not sufficient, especially where the violation has considerably impaired dignity, social status or social functioning of the injured, the injured may also seek compensation for non-pecuniary damage. The amount of any compensation for non-pecuniary damage will be determined by the court after considering the severity of the damage caused and the relevant circumstances.

Unfair dismissal

If an employer invalidly terminates the employment and the employee informs the employer that the employment shall continue, the employee's employment shall not terminate until the Slovak court decides that the employer cannot be reasonably requested to continue to employ the employee or that the termination of employment was valid.

The employee is entitled to wage compensation amounting to average earnings, from the date the employee requested continued employment until the date the employer allows the employee back to work or until the court decides on the termination of employment. Wage compensation may be awarded for a maximum of 36 months.

The invalidity of unfair dismissal may be challenged in court by the employee no later than 2 months from the effective date of termination.

Failure to inform & consult
Failure to consult or obtain approval for the termination of employment from the employee representatives may result in the termination being declared invalid by the court.

**CRIMINAL SANCTIONS**

Non-payment of wages or severance pay may be punished by a prison sentence up to 12 years, depending on the circumstances, motive and damage caused.

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LEGAL SYSTEM, CURRENCY, LANGUAGE

Common law, civil law and customary law, subject to the Constitution. The official currency is the South African Rand (ZAR). There are 11 official languages: Afrikaans, English, Ndebele, Northern Sotho, Sotho, Swazi, Tswana, Tsonga, Venda, Xhosa and Zulu.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign company conducting business within South Africa must register as an "external company" with the Companies and Intellectual Property Commission if it enters into employment contracts in South Africa, and it may be required to pay corporate income tax. A foreign company is regarded as conducting business within South Africa if that foreign company is a party to 1 or more employment contracts within South Africa or is engaging in a course of conduct, or has engaged in a course of conduct, in South Africa over the past 6 months that would lead a person to reasonably conclude that the entity intended to continually engage in business or conduct nonprofit activities in South Africa. Companies, including external companies, are obliged to register and deduct tax from an employee's salary and have reporting duties to the South African Revenue Service. The maximum personal tax rate is currently 45 percent.

Employers are required to contribute to prescribed employee benefit funds and make contributions to an unemployment insurance fund. Employee contributions to the unemployment insurance fund are deducted and paid on the employees’ behalf by the employer. The employer is also required to match these contributions.

PRE-HIRE CHECKS

Required

Immigration compliance.

Permissible

It is permissible to carry out background checks. A criminal record check may only be carried out if the candidate provides a copy of their fingerprints. Furthermore, in terms of the Protection of Personal Information Act, 2013
(POPIA), which came into effect on July 1, 2020, consent is required to conduct a criminal record check.

The National Credit Act, 2005 prohibits the release of credit reports "unless directed by the instructions of the consumer." Furthermore, the purposes for which credit reports may be used are limited in that they should only be used for considering a candidate for employment in a position that requires trust and honesty and entails the handling of cash or finances. It also provides that the consent of the consumer should be obtained prior to requesting the credit report for this purpose.

A medical check requires the consent of the individual.

While consent is not required to conduct other checks such as a check on qualifications, references and employment history, it is advisable to obtain consent. Furthermore, in terms of POPIA the applicant should be notified about the background checks that will be carried out.

**IMMIGRATION**

All non-citizens must hold an appropriate work visa. Local sponsorship for a work visa is generally required, and under certain categories of work visa, it may also be necessary to show that no local person can fill the applicant’s position. Foreign nationals who overstay their visa duration will be declared undesirable, and their ability to apply for any type of visa thereafter will be adversely affected.

**HIRING OPTIONS**

**Employee**

Full-time permanent employment, fixed-term, part-time and employment below the minimum hours per month, which may result in exclusion from minimum benefits. When engaging employees on fixed-term employment contracts, there may be a risk of a reasonable expectation of renewal or continued employment if the fixed-term employment contract is repeatedly renewed. In addition, where an employee is engaged on a fixed-term employment contract for longer than 3 months and the employee earns below a threshold amount determined by the Minister of Labour from time to time (ie, the BCEA threshold), which is set at ZAR211,596.30 per annum with effect from March 1, 2021, the employee is deemed to be employed on a permanent basis, unless one of a limited number of exceptions and/or reasons for using longer fixed-term employment exists. Furthermore, the employee must not be treated less favorably than a comparable employee performing the same or similar work unless there is a justifiable reason for different treatment.

Certain obligations arise for employers who employ part-time employees earning below the BCEA threshold. After an initial period of 3 months from commencement of such part-time employment, part-time employees earning below the BCEA threshold must be treated, on the whole, not less favorably than a comparable full-time employee doing the same or similar work, unless a justifiable reason for different treatment exists. After 3 months, employers are also required to provide part-time employees (earning below the threshold) with access to training and skills development, on the whole, not less favorable than the access applicable to comparable full-time employees.

A number of rights in the Basic Conditions of Employment Act 75 of 1997 (BCEA), including those relating to regulation of working time and leave, do not apply to employees who work fewer than 24 hours a month.
Independent contractor

Independent contractors are excluded from the employment protections afforded to employees, but legislation imposes a presumption of employment if certain elements exist in the working relationship, such as the right of supervision on the part of the employer. The presumption applies only to persons earning below the BCEA threshold. For other workers, the common law dominant impression test applies. There is no single indicator of an employment relationship. Instead, the court will look at the relationship as a whole to determine whether the relationship is one of employment or independent contracting. The level of control exercised by the employer over the “employee” is an important aspect to be considered.

Agency worker

Employees earning below the BCEA threshold enjoy additional protection if placed at a client through an agency (ie, temporary employment service). Except in limited circumstances, if the agency worker is placed at the client for longer than 3 months, the agency worker is deemed employed by the client for the purposes of the Labour Relations Act, 1995 but will remain employed by the agency or temporary employment service for the purposes of all other legislation. The agency worker also becomes entitled to be treated, on the whole, not less favorably than comparable permanent employees of the client unless there is a justifiable reason for different treatment. No deemed employment applies to agency workers earning in excess of the BCEA threshold.

EMPLOYMENT CONTRACTS & POLICIES

Requirements

In general, no formalities are prescribed, although the BCEA requires that a minimum list of written particulars of employment be provided. Compliance need not be in the form of a contract of employment; however, written employment agreements are common. Offers of fixed-term employment for employees earning below the BCEA threshold must be in writing and must contain certain prescribed terms (eg, the reason for use of a fixed-term agreement). Contract comes into existence upon valid acceptance of a valid offer of employment. Consensus with regard to the nature of the services rendered and remuneration is required. On commencement of the employment relationship, the employer is required to provide the employee with information such as the calculation and method of payment. The employee cannot contract out of certain rights contained in the BCEA.

Probationary

Probationary periods are permitted. The duration of the probationary period must be reasonable when regard is had to the period that would be required to determine the employee’s suitability for the job, and probation periods of 3 to 6 months are fairly common. An employer may not simply terminate an employee’s employment at the end of the probationary period, and is instead required to follow a fair performance management process in terms of which an employee is given reasonable guidance, counseling and training before terminating their employment. Thus, a fair process is required whether or not the employee is on probation, but South African courts have held that the reasons for the dismissal for poor performance may be “less compelling” when an employee is on probation.

Policies

An employer must have a sexual harassment policy as well as a policy dealing with protected disclosures (a whistleblowing policy). In addition, the law provides that all employers must adopt disciplinary rules that establish
the standard of conduct required of employees. This generally takes the form of a disciplinary code. Other policies are recommended but not mandatory. Employers are not required to have written health and safety policies unless directed otherwise, but are required to adhere to the requirements contained in the Occupational Health and Safety Act. Employers who are responsible parties (ie, data controllers) in terms of POPIA are required to have a PAIA Manual in place which sets out both a summary of the employer’s processing activities and the process for data subjects to follow should they wish to request access to information.

Third-party approval

None required.

LANGUAGE REQUIREMENTS

When rights of employees are affected, employers are required to ensure that the employees understand the action taken, or information imparted. This may require that information be supplied in a language that the employees can understand. Disciplinary proceedings may be considered unfair if conducted in a language with which the employee is insufficiently familiar to enable effective participation in the proceedings. Translators must then be supplied.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

Independent contractors are excluded from all employment protection provided that they are part of genuine independent contractor relationships, failing which there may be a misclassification risk. Specific categories of employees may further be excluded from some legislative protections – for instance, employees working less than 24 hours per month are excluded from minimum employment terms under the BCEA, and employees earning above the BCEA threshold are not entitled to overtime payments unless their contracts of employment provide otherwise.

Working hours

Employees who earn below the BCEA threshold may work a maximum of 45 ordinary hours a week (ie, 8 hours per day for employees who work a 6-day week and 9 hours per day for employees who work a 5-day week), subject to the exemptions identified in the BCEA. Employees who earn below the BCEA threshold may be required to work up to 10 hours’ overtime per week provided that they are only required to work a maximum of 12 hours in any day. Employees earning above the BCEA threshold, senior managerial employees and employees engaged as sales staff who travel to the premises of customers and who regulate their own hours of work may be required to work all reasonable hours necessary to efficiently perform their duties and responsibilities, including on weekends and public holidays, without any additional pay. Rules on rest breaks, night work and rest periods between shifts apply. Agreements on compressed work weeks and averaging of work hours may impact maximum work hours.

Overtime

Overtime may be worked if agreed between the employer and employee. An agreement to work overtime concluded in the first 3 months of employment is only valid for 12 months. Limitations on maximum overtime
apply (ie, 10 hours per week, or 15 hours in terms of a collective agreement), but agreements on compressing work weeks and averaging of work hours may alleviate limitations. Compensation for overtime is payable to employees earning below the BCEA threshold, but higher-earning employees are excluded from overtime payment unless the employment contract provides for it. Minimum statutory overtime rates are either 1.5 times the normal rate or 2 times the normal rate, with the highest rate being payable if the overtime is worked on a Sunday or public holiday and the employee is not normally required to work on Sundays and/or public holidays. Time off may be given in lieu of paying overtime by agreement.

Wages

The National Minimum Wage Act, 2018 provides for a minimum wage of ZAR21.69 per hour with effect from March 1, 2021. The minimum wage is ZAR21.69 per hour for the farming sector with effect from March 1, 2021. The minimum wage is anticipated to increase to about ZAR22.50 per hour in 2022.

Vacation

Employees are entitled to a minimum of 21 consecutive days' paid annual leave per annum on full remuneration in addition to official public holidays.

Sick leave & pay

All employees are statutorily entitled to paid sick leave equal to the number of days that the employee would work during a 6-week period per every 36-month employment cycle. Payment is based on basic wages the employee would have received for work on that day, not full remuneration. Pro-rated leave entitlements may apply for shorter periods of employment and, in the first 6 months of employment, an employee is only entitled to 1 day's sick leave for every 26 days worked.

Maternity/adoption/commissioning parental/parental leave and pay

Minimum of 4 consecutive months of unpaid maternity leave. Employees may claim partial remuneration through the Unemployment Insurance Fund. An employee who adopts a child under the age of 2 is entitled to 10 consecutive weeks' unpaid adoption leave, provided that, if the adoption order is in respect of 2 adoptive parents, then only 1 adoptive parent may apply for adoption leave and the other adoptive parent may apply for parental leave. An employee who is a commissioning parent in a surrogate motherhood agreement is entitled to 10 consecutive weeks' unpaid commissioning parental leave upon the birth of a child as a result of a surrogate motherhood agreement, provided that, if a surrogate motherhood agreement has 2 commissioning parents, only 1 commissioning parent may apply for commissioning parental leave and the other may apply for parental leave.

Employees who are not eligible for maternity leave, adoption leave or commissioning parental leave are eligible for 10 consecutive days' unpaid parental leave in the event of the birth or adoption of a child. While the abovementioned leave is unpaid, employees may claim benefits from the Unemployment Insurance Fund.

Employees are also entitled to 3 days' paid family responsibility leave to be used when an employee's child is sick or in the event of the death of a close family member.

DISCRIMINATION

Direct and indirect unfair discrimination is prohibited in terms of the Employment Equity Act, 1998. No person
may be unfairly discriminated against on the basis of any listed ground or other arbitrary ground. The listed grounds are race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, color, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, birth and any other arbitrary ground. Sexual harassment and unequal pay for work of equal value on prohibited grounds are given express protection as forms of unfair discrimination.

Where an employer is a designated employer (ie, employs more than 50 employees or has an annual turnover in excess of the prescribed threshold), they are obliged to put into place affirmative action measures to ensure that suitably qualified people from designated groups (ie, African, Coloured, Indian, women and people with disabilities) have equal employment opportunities and are equitably represented in all occupational levels in the workforce.

**BENEFITS & PENSIONS**

The contract of employment determines whether the employee is entitled to any further benefits, including subsistence, travel and pension allowances, bonuses or acting allowances.

There is no obligation on employers to provide pension fund benefits and medical aid benefits to employees.

**DATA PRIVACY**

The right to privacy is protected under the Constitution of the Republic of South Africa, 1996, the common law and the Protection of Personal Information Act, 2013 (POPIA), which came into effect on July 1, 2020. Case law recognizes that the right to privacy is not absolute and may be limited where it is reasonable and justifiable to do so. Personal information may be processed on the basis of one of the justifications for processing personal information under POPIA. These justifications include consent and where it is necessary for pursuing the legitimate interests of the responsible party or employer or third party to whom it is disclosed.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

Employees automatically transfer to the new employer by operation of law in the event of a transfer of a business or service as a going concern. No general consultation requirement, and employees transfer on terms and conditions that are, on the whole, not less favorable. Disclosure of information to employees required as well as the conclusion of a written agreement setting out a valuation of the accrued employee-related liabilities, with failure to do so resulting in limited joint and several liability for the 2 employers for a period of 12 months if an employee is dismissed for operational requirements. A dismissal that is related to a transfer is automatically unfair, but dismissals due to genuine operational requirements may still be effected if the reason for dismissal is unrelated to the transfer.

**EMPLOYEE REPRESENTATION**

Employees are constitutionally entitled to join a trade union, to be represented by such trade union, and to strike. Industry-wide collective bargaining agreements may be concluded, which apply to parties in a bargaining council (ie, a body formed by organized labor and organized employers for a particular sector, which forms the forum for industry wide collective bargaining). The result is an extensive framework of collective bargaining, organizational
rights, collective agreements and bargaining councils that play a central role in most commercial and employment activities.

**TERMINATION**

**Grounds**

There is no employment-at-will. Termination is permissible but must be both substantively and procedurally fair. Dismissal is only justifiable by reason of misconduct, incapacity (i.e., ill-health or performance) or operational requirements. Termination by effluxion of time (i.e., fixed term or retirement age) is not considered dismissal; hence there is no requirement for a fair reason or fair process in such circumstances.

**Employees subject to termination laws**

All employees, regardless of their income or length of service, are protected from unfair dismissal.

**Prohibited or restricted terminations**

There are increased penalties for automatically unfair dismissals. Automatically unfair dismissals include for instance dismissals due to employee participation in lawful strike action, dismissals due to an employee’s pregnancy or a reason related to pregnancy, dismissal on account of having made a protected disclosure, dismissal related to a transfer and dismissal for any unfairly discriminatory reason.

**Third-party approval for termination/termination documents**

No approval is required from any labor authority unless this is a condition imposed by the competition law authorities arising from an intermediate or large merger.

**Mass layoff rules**

Strict information and consultation rules apply to all retrenchments (i.e., operational requirement dismissals or retrenchments). Additional requirements apply to large-scale retrenchments which are governed by section 189A of the Labour Relations Act, 1995. This applies where the employer employs more than 50 employees and contemplates the retrenchment of a prescribed threshold number of employees compared with the total number of employees in the workforce, taken together with the number of employees retrenched during the past 12 months.

No notice to government officials required, but the involvement of the Commission for Conciliation, Mediation and Arbitration is required in the case of mass retrenchments.

**Notice**

Except for the limited instances justifying summary dismissal, minimum BCEA notice periods of between 1 week and 4 weeks apply, unless contracts of employment provide for longer notice, or a collective agreement provides a shorter period. Notice to be given in writing. Notice cannot be given while the employee is on any type of leave.

**Statutory right to pay in lieu of notice or garden leave**
Employer may freely elect to pay remuneration in lieu of notice, irrespective of who gives notice. The decision to waive the obligation to work during a notice period rests with the employer, but the employee must agree to a waiver of the obligation to pay remuneration. The employee cannot be compelled to take accrued leave during the notice period. Garden leave is not regulated by statute.

Severance

Only payable in the event of operational requirement dismissals. Minimum of 1 week’s remuneration per completed year of service, subject to additional payments agreed upon in the consultation period. Severance is one of the mandatory topics of consultation.

POST-TERMINATION RESTRAINTS

In principle, enforceable, with the party seeking to escape its effect having the onus of proving that the restraint ought not to be enforced, for being unreasonable and/or against public policy. The enforcing party must, however, be able to show that there is a proprietary interest worthy of protection, and the limitations to competition must not go beyond what is reasonably necessary to protect such legitimate business interest. Furthermore, the restraint must be reasonable as regards the nature, duration and the geographical area in which the restraint applies.

Proprietary interests include client relationships and trade secrets.

Non-competes

Permissible, in principle, if the employer has a proprietary interest worthy of protection and the restraint goes no further than necessary to protect that interest and the restraint is reasonable as regards the nature, duration and the geographical area in which it applies. A restraint period of 12 months is generally regarded as reasonable.

Customer non-solicits

Permissible.

Employee non-solicits

Permissible.

WAIVERS

Employees may contract out of common law rights without any formalities. Limited right to waive statutory rights (ie, only to the extent that legislation may allow such waiver). No specific requirement that the employee waiving a right must be represented or for any formalities to be met. Waivers are enforceable provided that the employee is paid something more than what they are legally entitled to (ie, a gratuity).

REMEDIES

Discrimination and sexual harassment
An employer may be held vicariously liable for the acts of its employees. In order to defend a claim, the employer must show that they were either not made aware of the conduct or took all reasonable steps once they became aware. If the employer becomes aware of discriminatory conduct, the employer is required to immediately investigate and take steps to eliminate the discriminatory conduct.

Unfair discrimination claims must first be referred to the Commission for Conciliation, Mediation and Arbitration (CCMA) or a Bargaining Council with jurisdiction for conciliation. If conciliation fails, the claim is referred to the Labour Court for adjudication or for arbitration at the CCMA or Bargaining Council in limited circumstances (ie, sexual harassment cases, with the parties’ consent, or if the complainant earned below the BCEA threshold). Strict time limits apply – usually 6 months from the cause of action arising.

Remedies include compensation and damages (uncapped).

**Unfair dismissal and unfair labor practices**

The majority of disputes must be referred to the CCMA or Bargaining Council with jurisdiction for conciliation. If conciliation fails, the nature of the dispute determines whether the dispute must be referred to adjudication at the Labour Court or arbitration at the CCMA or Bargaining Council. Strict time limits apply.

The primary remedy for a substantively unfair dismissal is re-instatement. Where the employee does not seek re-instatement or re-instatement is not practicable or the dismissal is only procedurally unfair, then compensation, limited to a maximum of 12 months’ remuneration, may be ordered. This increases to 24 months’ remuneration for an automatically unfair dismissal.

**Failure to inform & consult**

A failure to consult may constitute the basis of a finding of procedural unfairness in an operational requirements dismissal. Where only procedural unfairness is found, the re-instatement remedy is not available. For large-scale retrenchments, if an employer does not comply with a fair procedure, which includes engaging in consultations, the Labour Court may be approached for orders including compelling the employer to comply with a fair procedure or interdicting the employer from dismissing before a fair procedure is complied with.

**CRIMINAL SANCTIONS**

Employment law is largely decriminalized; however, specific legislation renders some behavior a criminal offense – for example, fraudulent behavior. Law enforcement bodies must be notified if the employer knows or suspects that the employee has viewed child pornography. Section 34 of the Prevention and Combating of Corrupt Activities Act, 2004 requires an employer to report certain criminal offenses committed by an employee. These include criminal offenses such as theft, fraud, forgery and extortion involving an amount over ZAR100,000. It also includes corruption regardless of the amount involved.
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SOUTH KOREA

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law, though court precedents play an important role. The official currency is the South Korean won (KRW). The official language is Korean.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Foreign companies may directly engage employees in Korea; however, because of potentially negative tax implications, it is uncommon for foreign companies to do so. There are 4 ways for foreign nationals to engage in business activities in Korea:

- Establishing a local corporation
- Opening a private business
- Opening a branch
- Opening a liaison office

Payroll withholdings are required.

PRE-HIRE CHECKS

Required

Immigration checks are generally required.

Permissible

Under the Personal Information Protection Act (PIPA), to conduct background checks that go beyond the scope generally required to enter into an employment agreement, consent must be obtained from the applicant. Separate consent must be obtained if sensitive information, such as an employee's health information or criminal records,
IMMIGRATION

Long-term and short-term general work visas are available to visit Korea for business-related purposes. Two short-term visas are available (C-3-4 and C-4 visas), and 3 long-term visas are available (D-7, D-8 and E-7 visas). The appropriate visa type depends, among other things, on the nature of the assignment or employment and the type of employing entity located in Korea.

Special work visas (E-4, D-5 and D-9 visas) are available for foreign nationals working in highly specialized areas of expertise. Special resident visas (F-4 and F-5 visas) are available which allow a foreign national to live and work in Korea without requiring a separate work visa.

HIRING OPTIONS

Employee

Employees may be employed on either an indefinite basis (referred to as "regular" workers) or a definite/fixed-term basis for a maximum term of 2 years ("non-regular" workers). Fixed-term employees may be deemed to be employed on an indefinite basis if employed for a period of greater than 2 years, in principle.

Employees may be engaged on a full-time or part-time basis.

Independent contractor

Independent contractors may be engaged, and companies should be careful to avoid establishing employee status whereby the individual is entitled to all the benefits of an employee, including severance and employment security, thus, increasing the compliance, tax, payroll and other risks to the company. The primary factor distinguishing employees from contractors is the degree of supervision and control by the company over the individual.

Agency worker

Engagement governed by the Act on the Protection of Temporary Agency Workers. These are "dispatched workers" employed by a temporary work agency who provide services for a user company, under their direction and instruction, in accordance with the terms and conditions of a contract on temporary placement of workers, executed between the temporary work agency and the user company. The employment relationship is with the temporary work agency.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

Under the Labor Standards Act (LSA), all employers in Korea must enter into a written agreement with their employees, which details, among other working conditions, wages, working hours and recess periods, weekly paid days off and paid annual leave. Any agreement that does not satisfy the standards prescribed by the LSA and other binding laws relating to working conditions will be void to the extent that it fails to meet those legal requirements.
Probationary periods

No fixed period for probation by statute, though parties may agree to a probationary period. Generally, a period of 3 to 6 months is adopted.

Policies

Rules of employment are required in companies with 10 or more employees in Korea. Rules of employment must include details on core working terms and conditions per the LSA, such as working hours, wages, retirement, award and discipline, safety and health, and holidays. When establishing the rules of employment, an employer must obtain comments from the union representing the majority of the employees, or, if no such union exists, from a majority of the employees, and then file such comments with the Ministry of Employment and Labor (MOEL) along with the rules of employment written in Korean.

Aside from those previously mentioned, there are no mandatory policies. However, the Occupational Health and Safety Act (OHSA) establishes a basic framework of general standards for occupational health and safety, and it requires most workplaces to establish an industrial safety and health committee which is to make regular reports to the government.

Third-party approval

Rules of employment must be filed with the MOEL. Apart from that, no third-party approval is required.

LANGUAGE REQUIREMENTS

No language requirements.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

Generally all. Employees and dispatched workers are entitled to statutory employment rights, such as statutory severance pay and annual paid leave, while other types of workers, such as independent contractors, are not.

Working hours

Statutory limit is 8 hours per day and 40 hours per week. Employees in managerial or supervisory positions and employees handling confidential information are not subject to the statutory limits on working hours. As of January 2020, the 52-hour work week system has been implemented to most businesses, except for those with 5 to 29 employees, which will need to implement the system from July 1, 2021.

Overtime

Limited to 12 hours per week, to be paid at 150 percent of the ordinary wage. However, overtime work performed on a holiday for 8 hours or less shall be paid at 150 percent of the ordinary wage. Overtime work performed on a holiday for more than 8 hours shall be paid at 200 percent of the ordinary wage.
Wages

The Minimum Wage Act (MWA) provides for minimum wage levels. The minimum wage may be fixed on an hourly, daily, weekly or monthly basis. The hourly minimum wage rate in effect for 2022 is KRW9,160. The minimum wage is calculated by adding fixed allowances to basic pay, although it excludes other compensation, such as discretionary bonuses, overtime pay and fringe benefits.

Vacation

Employees must be given a minimum of 15 days' paid annual leave if they meet the overall yearly requirement of at least 80 percent attendance during the previous year, while employees who do not meet the attendance requirement must be afforded at least 1 day of paid annual leave for each full month of attendance. New employees who started work after May 30, 2017 and have worked for less than 1 year must be given at least 1 day of paid annual leave for each full month of service, up to 11 days. Thus, new employees will be able to receive up to 26 days of paid annual leave during the first 2 years of employment (up to 11 days in the 1st year of employment and 15 days in the second year of employment). Following completion of the 1st year of service, this entitlement increases by 1 day after each 2 years of service, up to a maximum of 25 days.

Sick leave & pay

There is no legal requirement for employers to provide leave to employees for non-work-related illnesses or injuries. It is not uncommon, however, for companies to provide paid sick leave whether or not an injury or illness is work related. Employees generally use their annual paid leave as personal sick days if paid sick leave is not available. Employers are required under the LSA to provide paid leave for work-related illnesses or injuries.

Maternity/parental leave & pay

Employers must grant pregnant female employees 90 days (120 days in case of multiple births) of paid maternity leave, which can be used before or after childbirth. Compensation for the 1st 60 days (75 days in case of multiple births) is paid by the employer, while the remaining days are paid from the Employment Insurance Fund, a state-run fund established by the Ministry of Employment and Labor under the Employment Insurance Act. The statutory 90/120 days' maternity leave includes holidays and Sundays. At least 45 days (60 days in case of multiple births) must be used after childbirth so that, even where more than 45 days (60 days in case of multiple births) were used before childbirth, an employer must allow 45 days (60 days in case of multiple births) of maternity leave after childbirth.

Male employees are entitled to 10 days' paid leave, which can be taken at the employer's discretion within 90 days of the child's birth. The leave may be divided into 2 periods of leave.

Employees with children 8 years of age or under or in the 2nd year or lower of elementary education have an entitlement to unpaid childcare leave of up to 1 year. A recent amendment to the Equal Opportunity Act regarding use of childcare leave allows for the yearly childcare leave allotment to be divided into up to 3 periods of leave (from the previous 2 periods) beginning from December 8, 2020. This entitlement is applicable to both fathers and mothers. The employee must have worked for the same employer for at least 6 continuous months.

As of November 19, 2021, childcare leave is also available for pregnant female employees before childbirth. While the overall period of childcare leave is limited to 1 year, childcare leave during pregnancy will not be deducted from the allowed number of split uses.
The employer is not obliged to pay wages during childcare leave; however, employees are instead paid under the employment insurance system.

- For the 1st 3 months of childcare leave, employees may receive 80 percent of their ordinary wage, up to KRW1.5 million.

- From the 4th month of childcare leave until the end of childcare leave, employees may receive 50 percent of their ordinary wage, up to KRW1.2 million.

- 25 percent of the above amount is payable 6 months after the employee’s return to work.

- The MOEL released the plan to improve childcare leave in 2020 as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>Regular compensation for childcare leave</th>
<th>Employees taking their 2nd childcare leave</th>
<th>Single-parent household</th>
</tr>
</thead>
<tbody>
<tr>
<td>For the 1st 3 months</td>
<td>80 percent (capped at KRW150 million)</td>
<td>100 percent (capped at KRW250 million)</td>
<td>100 percent (capped at KRW250 million)</td>
</tr>
<tr>
<td>4th to 6th month</td>
<td>50 percent (capped at KRW120 million)</td>
<td>50 percent (capped at KRW120 million)</td>
<td>80 percent (capped at KRW150 million)</td>
</tr>
<tr>
<td>After the 7th month</td>
<td>-</td>
<td>-</td>
<td>50 percent (capped at KRW120 million)</td>
</tr>
</tbody>
</table>

If an employee requests leave to receive medical fertility treatments, employers are required to approve such leave request up to 3 days per year, with the 1st day of the leave being paid leave; the other 2 days are unpaid leave days. Nonetheless, if granting the leave on the requested date(s) would cause significant hindrance to the normal operations of the business, an employer may consult with the employee and change the date(s) of the leave.

Employers are legally required to treat May 1 (ie, Labor Day) as a mandatory paid holiday for employees. Beginning from January 1, 2021, businesses with 30 to 299 employees are required to guarantee holidays designated by the Presidential Decree as paid holidays, while businesses with 300 or more employees began to do so from January 1, 2020.

With the enactment of the Public Holidays Act, starting January 22, 2022, employers must grant the next business day as a substitute holiday in cases where a national holiday (Independence Movement Day (March 1), Independence Day (August 15), National Foundation Day (October 3) and Hangul Proclamation Day (October 9)
or Children’s Day (May 5)) falls on a Saturday or Sunday. The substitute holidays must be treated as paid holidays. However, substitute holidays will not be granted for New Year’s Day (January 1), Buddha’s Birthday (April 8 in the lunar calendar), Memorial Day (June 6) and Christmas (December 25), even if such public holidays fall on Saturday or Sunday.

**DISCRIMINATION**

The LSA prohibits discrimination against employees on the grounds of sex, nationality, religion or social status. Discrimination is also prohibited under statutes protecting disabled employees, female employees, foreign workers and non-regular workers. Age discrimination is also prohibited.

Employers, managers and employees are prohibited from sexually harassing anybody in the workplace. Whether or not an act or acts constitute sexual harassment is determined based on the complainer’s viewpoint (ie, based on how the average person in the complainer’s position would view the conduct), regardless of the intent or perception of the alleged harasser. It is also prohibited to retaliate against an employee who is the victim or employee who reports workplace harassment.

The “Guidance on Review of Rules of Employment Regarding Workplace Harassment” issued by the MOEL went into effect as of July 16, 2019. As a result, the rules of employment must include the definition of workplace harassment and provisions prohibiting workplace harassment, and failure to do so will result in “amendment orders” from the MOEL.

While the details of workplace harassment are stated in the LSA, as of October 14, 2021, if an employer or certain members of his/her family engages in workplace harassment, an administrative fine not exceeding KRW10 million may be imposed. Moreover, in addition to the employer’s obligation to conduct a prompt investigation and take necessary measures, the law imposes a confidentiality obligation on parties involved in the workplace harassment investigation. Violations of these obligations may result in an administrative fine of up to KRW5 million.

**Serious Accident Prevention Act (SAPA)**

The SAPA, effective as of January 27, 2022 for businesses with 50 or more employees, works to secure the safety and health of workers in the workplace or general public by holding the top decision maker of the business accountable for “serious accidents.”

The responsibilities of employers and responsible management personnel under the SAPA include establishing a safety and health management system that covers workforce and budgetary issues, implementing necessary plans to prevent recurrence of serious accidents and taking necessary measures to ensure compliance with relevant safety- and health-related laws.

**BENEFITS & PENSIONS**

Employers must subscribe to mandatory social insurance programs, the National Pension, the National Health Insurance, the Unemployment Insurance and the Industrial Accident Compensation Insurance.
DATA PRIVACY

Under the PIPA, an employee is entitled to request the employer to allow access to, correct or delete their personal information. The PIPA requires an employer to obtain the consent of the individual employee when their personal information is obtained or provided to third parties.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

The transferee automatically assumes the transferor's responsibilities with regard to the employees, including their working terms and conditions as well as liabilities, unless the employees otherwise agree. Unless there is just cause, employees are protected against dismissal before or after the transfer.

EMPLOYEE REPRESENTATION

Employees have the right to establish and operate trade unions, and collective bargaining has a binding legal effect.

Each workplace with 30 or more employees must have a labor management council (LMC). LMCs are composed of an equal number of members representing employers and employees, and there shall be no less than 3 and not more than 10 members.

TERMINATION

Grounds

The LSA provides that an employer may only terminate for "just cause," though "just cause" is not defined. The courts have generally held that "just cause" only exists in limited circumstances, including:

- Fault attributable to the employee making continued employment untenable – for example, where the employee is guilty of sufficiently grave misconduct, making it impossible to continue the relationship; continuous and persistent unsatisfactory performance; criminal or deliberate tortious acts against the employer; serious criminal acts not in the line of duty; improper relationships with other employees; or material misrepresentation in the hiring process

- Urgent business necessity to try and save a failing business from imminent bankruptcy

While it is not mandatory to have a Disciplinary Action Committee (DAC), procedures for disciplinary action are required to be included in the rules of employment, and such procedures may vary according to the needs of the workplace.

Employees subject to termination laws

All employees are covered if their employer employs 5 or more employees.

Restricted or prohibited terminations

Employees on sick leave due to a job-related illness or injury (and for 30 days after their return), employees on
maternity leave (and for 30 days after their return) and employees on childcare leave.

**Third-party approval for termination/termination documents**

None required.

**Mass layoff rules**

Lawful, provided an employer can show there is an "urgent business necessity," that the employer has made best efforts to avoid the termination and that an objective selection process is conducted.

A duty to report dismissals may be triggered depending on the number of employees routinely hired:

- Where 99 or less employees are routinely hired, 10 or more dismissals trigger a duty to report.
- Where 100 to 999 employees are routinely hired, dismissal of 10 percent of the workforce trigger a duty to report.
- Where 1000 or more employees are routinely hired, 100 or more dismissals trigger a duty to report.

**Notice**

If an employee is dismissed, the LSA requires that the company provide the employee at least 30 days' prior notice or at least 30 days' ordinary wages in lieu of notice. The company may be exempted from this requirement if either:

- The employee has been continuously employed for less than 3 months
- It can establish that it is impossible to maintain its business due to a natural disaster or other unavoidable reason or
- The employee intentionally causes substantial problems for the company or intentionally damages company property.

**Statutory right to pay in lieu of notice or garden leave**

A statutory right to at least 30 days' payment in lieu of notice. Garden leave is possible if provided for in the contract of employment or under company policy.

**Severance**

Employers must adopt a retirement benefit system. The default is the statutory severance pay system, whereby, upon termination of employment for any reason (including employee resignation), where the employee has been employed for at least 1 year, the employee is entitled to severance pay of 30 days' "average wages" (ie, all wages generally including any bonus paid within the previous 3 months) for each year of continuous service.

**POST-TERMINATION RERAINTS**
Restrictive covenants are generally enforceable in South Korea, provided they are reasonable and protect an employer’s trade secrets.

**Non-competes**

Enforceable if reasonable and necessary to protect the employer’s trade secrets.

**Customer non-solicits**

Enforceable if reasonable and necessary to protect the employer’s trade secrets.

**Employee non-solicits**

Enforceable if reasonable and necessary to protect the employer’s trade secrets.

**WAIVERS**

Permissible. Terminations are often implemented through mutual agreements.

**REMEDIES**

**Discrimination**

Employees may bring a claim before the National Human Rights Commission with a possible remedy of recommendation for, for example, cease of discriminatory activities and/or damage compensation.

**Unfair dismissal**

An employee may bring a claim before the relevant Regional Labor Relations Commission (RLRC) with a possible remedy of re-instatement with back pay. Where the employee does not wish to be re-instated, a lump sum may be provided to the employee. Employees dismissed without cause may also initiate civil proceedings in the District Court.

**Failure to inform & consult**

In certain circumstances, the employer’s action may be deemed null and void in the absence of required consultation. Action for breach of contract may be possible, but damages should be substantiated. Failure to obtain comments concerning the rules of employment may subject the employer to a criminal fine up to KRW5 million.

**CRIMINAL SANCTIONS**

If the ruling of unfair dismissal is finalized by the court and the employer does not comply with the re-instatement order from RLRC, the employer may be subject to an imprisonment of up to 1 year or a criminal fine of up to KRW10 million.
KEY CONTACTS

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Kim & Chang
hoin.lee@kimchang.com
LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of European Union (EU), so required to implement relevant EU directives. The official currency is the Euro (EUR). The official language is Spanish.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity may engage employees in Spain with proper payroll registrations, subject to business, corporate, social security and tax considerations. Withholdings for income tax and social security are to be done through payroll.

PRE-HIRE CHECKS

Required

Immigration compliance. For certain roles (eg, security guards), the employee must provide the potential employer with a certificate proving that they do not have a criminal record. These certificates cannot be stored by the employer nor transferred to any other entity.

Permissible

Reference and education checks are permissible with the applicant's consent only. Most companies and institutions prefer to deliver the information directly to the applicant so that they may supply it to the potential new employer directly and personally.

IMMIGRATION

Nationals of the European Economic Area (EEA) and Switzerland have a right to work in Spain. Residency and work permits are required for non-EEA/Swiss nationals.

In order to adapt the Spanish legal system to the consequences of the United Kingdom’s withdrawal from the European Union at the end of the transitional period of the Withdrawal Agreement, the Spanish government
approved the Royal Decree Law 38/2020 of 29 December (RDL), adopting temporary measures to protect the interests of citizens and economic agents who may be affected by the United Kingdom’s withdrawal. Pursuant to this law, as of January 1, 2021, UK nationals are considered non-EU nationals for the purposes of immigration.

New Labor Reform

On December 29, 2021, the Spanish Council of Ministers approved a new labor reform agreed among the government, trade unions and employers that amends key aspects of Spain's employment legislation. However, the new law has not yet been validated by the Spanish Congress, and the majority required may not be reached. Until it is validated, the reform will be in force, although further changes to the reform may be implemented.

HIRING OPTIONS

Employee

Indefinite or fixed-term (subject to strict limitations) and full-time or part-time. Part-time and fixed-term employees have the right not to be discriminated against due to their status.

The new labor reform redefined fixed-term contracts, establishing two main types: (i) a contract due to production circumstances and (ii) a worker replacement contract. If the employees are hired through temporary contracts but the engagement is based on permanent grounds, they will be considered indefinite employees.

The presumption that an employment contract is for an indefinite term is reinforced, and a discontinuous permanent contract for intermittent activities is preferred in opposition to a temporary one.

Additionally, the new labor reform redrafted training contracts, setting up two new options: (i) a contract for training in alternation with salaried employment and (ii) a training contract to obtain professional experience appropriate to the individual’s level of studies.

Independent contractor

Independent contractors may be engaged directly by the company. It is important to check that they are not misclassified, as this may create liability.

Agency worker

Agency workers may only be engaged for a fixed-term or a training situation. Agency workers have the right to equal treatment as compared to employees, in relation to their essential labor conditions, through the entire length of the relationship. In addition, the new labor reform has introduced new violations and penalties. Monetary penalties for hiring services in cases other than those provided for by law have been increased and will be considered for each agency worker.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

Verbal employment contracts are legal in certain cases but are not market practice. In any case, for employment
relationships which exceed 4 weeks, certain minimum information must be put in writing, and, in all cases, a summary of the main terms of the contract (*copia básica*) must be lodged with the Employment Office. For certain types of contracts (eg, seasonal employment agreements), an official template of the employment agreement is also required, as provided by the Employment Office.

As of 2022, violations of the law are considered for each employee in the case of non-compliance with the type of contract.

Mandatory employment legislation and the applicable collective bargaining agreement (CBA) must be honored.

Law 10/2021 on remote work addresses the following key points in relation to employees working remotely:

- The regulation applies to employees who work from home – or any other remote location of their choice for at least 30 percent of their statutory hours, computed over a 3-month reference period.
- Working from home cannot be imposed unilaterally either by the employer or the employee.
- A written agreement with mandatory minimum provisions is required between the employer and the employee.

**Probationary periods**

Permissible. Subject to the limits fixed by the applicable CBA. Where the CBA is silent, the term is 6 months for qualified employees, 2 months for unqualified employees, and 3 months in companies with fewer than 25 employees.

**Policies**

Not formally required, although it is common practice for major companies and multinational employers to have specific policies in place.

**Third-party approval**

Apart from the filing of the basic copy of the employment agreement (*copia básica*) mentioned above, there are no requirements for employment contracts or policies to get approved by any third party. However, if policies include work control systems (e.g., policy regarding the use of the IT systems) or professional formation plans, then employees’ representatives should be invited to provide a non-binding report.

**RED employment and flexibility mechanism**

Included in the new labor reform, is an employment flexibility and stabilization mechanism to be activated by the Council of Ministers, which will allow companies to apply for measures to reduce working hours and suspend employment contracts subject to consultation with the workers’ representatives and authorization by the labor authorities.

**LANGUAGE REQUIREMENTS**

The basic copy of the employment agreement (*copia básica*) must be in Spanish. The official template employment
contract is provided by the Employment Office in Spanish only. If companies issue additional employment agreements, they may technically be in any language, but a Spanish version is highly recommended as, in case of conflict, the judge will make a decision based on the Spanish translation.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All employees, except employees subject to special employment regulation of senior management (Royal Decree 1382/1985) who are not subject to the minimum employment rights established by the Workers’ Statute, unless otherwise agreed. In addition, most CBAs exclude senior managers from their scope.

Working hours

As a general rule, there is a 40-hour-per-week limit on working time. CBAs may establish reduced working hours. All companies should have a working time register in order to keep a record of the employees’ workdays, and any employee, representative or labor inspector may access the register at any time in the workplace.

Overtime

Only with employee consent, except in cases of force majeure. Overtime must be compensated in cash (with a value at least equivalent to an ordinary hour’s work) or time off in the following 4 months. CBAs may establish more beneficial treatment for the employee.

Wages

The national minimum wage for full-time positions in 2022 amounts to EUR32,17 gross per day, or EUR965 gross per month (14 payments, 12 monthly payments and 2 extraordinary payments in July and December).

There are currently no scheduled increases in the minimum wage at the national level, although negotiations for increases may start in 2022.

The applicable CBA also may set out a salary chart with a higher minimum wage.

Vacation

30 calendar days' vacation per year plus 14 public holidays. CBAs may establish longer vacation periods.

Sick leave & pay

Employees are entitled to take time off for sick leave, usually up to 18 months. There is mandatory sick pay, which is borne by the Social Security Scheme. CBAs may require the employer to improve upon the mandatory social security benefits.

Maternity/parental leave & pay

16 weeks’ paid maternity leave and, from 2021, 16 weeks' paid paternity leave. The first six weeks of the 16-week leave are mandatory for the employees and must be taken immediately after the birth of the child. In both cases, the pay is borne by the Social Security Scheme and is equivalent to 100 percent of the regulatory base (that is, the
employee’s salary determined pursuant to a specific formula over which public benefits are calculated). Employees have a right to return to work. CBAs may require the employer to improve social security benefits. In some cases, the father may take a part of the maternity leave days.

**Parental leave for breastfeeding**

Employees are entitled to a daily one-hour leave from work, which may be divided into two periods, to breastfeed a child until the child reaches the age of nine months. It is also possible to accumulate the hours of this leave into full working days that can be taken.

**DISCRIMINATION**

The following characteristics are protected: age, disability, gender reassignment, marriage or civil status, pregnancy or maternity, race, religion or belief, sex or sexual orientation, political ideas, union membership, family relationships with coworkers and language.

Discrimination cases are not frequent in Spain, with the exception of trade union-related issues, or discrimination based on family-related rights (i.e., maternity and paternity).

Royal Decree 901/2020, effective on January 14, 2021, regulates the way equality plans are to be produced, registered and accessed. All companies, regardless of the number of workers, must adopt, after negotiation, measures aimed at avoiding discrimination between women and men, promoting working conditions that avoid sexual harassment and harassment on the grounds of sex, and providing procedures for the prevention of discrimination and creating channels for complaints and claims.

All companies with 50 or more employees are obliged to implement an Equality Plan. Companies with between 50 and 100 employees have a deadline of March 7, 2022. Companies with over 100 employees must have implemented the Equality Plan by March 7, 2021.

In addition, Royal Decree 902/2020, effective on April 14, 2021, establishes specific measures to reinforce the right to equal treatment and non-discrimination between women and men in relation to remuneration. This regulation establishes a principle of transparency in remuneration to enable direct and indirect discrimination to be identified. In particular where discrimination arises when individuals do not receive equal pay for work of equal value, unless the difference can be lawfully justified. This will require steps from employers in the following areas: remuneration records, a remuneration audit or a job evaluation system of the professional classification.

**BENEFITS & PENSIONS**

Minimum benefits and pensions fixed by law and covered by the Social Security Scheme. CBAs may establish further benefits or pensions complementing those set out by the public system.

**DATA PRIVACY**

Spain is subject to the General Data Protection Regulation of the European Union (GDPR). The Spanish legislation that implements the GDPR is the Organic Law 3/2018 on data protection and guarantee of digital rights (**Ley Orgánica 3/2018 de protección de datos y garantía de los derechos digitales**). Employees must generally be notified of
personal data processing (and, in certain cases, must give consent). Registration of databases with the Spanish Data Protection Commissioner (AEPD) is no longer required. Special rules apply to data transfers, even between companies belonging to the same group. Prior stringent restrictions on international data transfers, on monitoring email and internet use in the workplace and on video surveillance at work, have been eased and aligned with the GDPR, although significant compliance requirements remain.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

Automatic transfer under the EU Acquired Rights Directive and Section 44 of the Workers’ Statute in case of change of employer (e.g., sale of an independent stand-alone business unit, merger or spinoff). Right of the employees to maintain the same terms and conditions of employment. The transfer is not by itself a cause for fair dismissal. Duty to inform, and in case labor measures are planned (e.g., change of work center, change of employment conditions, collective dismissal), duty to consult with employee representatives.

**EMPLOYEE REPRESENTATION**

Both trade unions and works councils occupy a pre-eminent position in Spanish labor law. Industry-level CBAs are very common. They may co-exist with CBAs agreed at a company level.

In companies with 11 to 49 employees (or in companies with 6 to 10 employees, if requested by the majority of employees), employees may initiate elections to choose personnel delegates; in companies with 50 or more employees, they may hold elections to a works council. Personnel delegates and works councils have the same rights. The company cannot initiate such elections, but also cannot hinder employee rights in that regard.

**TERMINATION**

**Grounds**

Decided unilaterally by the employer: redundancy of the job position based on economic, organizational, productivity or technological reasons, on individual or on a collective basis; or disciplinary dismissal, including based on performance.

Other termination grounds: employee resignation; constructive dismissal; mutual agreement; grounds legally agreed upon in the contract; expiration of a fixed-term contract; employee’s retirement; force majeure; death or permanent disability.

**Employees subject to termination laws**

All.

**Restricted or prohibited terminations**

Some employees are protected against unfair dismissal (e.g., pregnant employees, employees enjoying reduced working time to take care of a child, employee representatives or employees who have filed a claim against the company may also receive protection based on retaliation grounds). Protected employees may be terminated, but only for fair cause, or they will be entitled to re-instatement and back wages.
Due to the coronavirus disease (COVID-19), there is a temporary dismissal ban based on causes related to COVID-19. Companies that have implemented temporary suspensions of employment contracts (ERTEs) cannot dismiss any employee for a period of 6 months from the time the first employee affected by the suspension effectively returns to work. Otherwise, it will be required to reimburse all benefits to that employee.

In 2019, the EU passed the Whistleblower Protection Directive, which had a deadline of December 17, 2021 for Member States to incorporate into their national laws. The Directive provides for minimum standards that must be adopted, including protections for covered individuals who report a breach of EU law in any prescribed areas. An individual who meets the conditions for protection under the Directive are safeguarded from any form of retaliation, as well as from threats of or attempt at retaliation. EU Member States are in various stages of implementation.

**Third-party approval for termination/termination documents**

Third-party approval is not required for terminations. Termination documents in accordance with employment legislation are required.

**Mass layoff rules**

Collective dismissal rules are triggered in the event that the number of affected employees exceeds the legal thresholds (e.g., 10 terminations in a 90-day period in companies with fewer than 100 employees).

Strict information and consultation rules apply, which require involving both the employees’ representatives and the labor authority. However, there is no need to obtain approval for termination.

Terminations may be challenged by the employees, the employees’ legal representatives and, in exceptional cases, by the administration.

**Notice**

15 days' notice in case of redundancy of common employees. Senior managers are entitled to a minimum 3 months' notice.

Not required in case of disciplinary dismissal.

**Statutory right to pay in lieu of notice or garden leave**

If the 15 days’ notice is not honored, payment in lieu of notice is required.

Garden leave is not expressly regulated, although employers sometimes use garden leave, which may result in certain issues given the employee's right to work.

**Severance**

Fair individual redundancy: 20 days of salary pay per year of service, up to 12 months. For collective layoffs, this is usually increased through collective consultations.

Fair disciplinary dismissal: no severance.
POST-TERMINATION RESTRAINTS

Those aimed at protecting the employer’s legitimate business interests may be enforced provided that:

- The employee receives adequate consideration
- The restraints do not exceed 2 years for qualified employees and 6 months for non-qualified employees

Non-competes

Permissible under the abovementioned rules.

Once agreed upon, the employer cannot unilaterally waive, and therefore must pay the agreed-upon compensation. This restriction is usually agreed upon with high-profile employees only.

Customer non-solicits

Permissible under the abovementioned rules. Extensive solicitation may also be subject to civil law claims under unfair competition rules.

Employee non-solicits

Permissible under the abovementioned rules. Extensive solicitation may also be subject to civil law claims under unfair competition rules.

WAIVERS

In principle, statutory rights cannot be waived, and any waiver of the rights will be null and void. However, some exceptions apply.

REMEDIES

Discrimination

Remedies include declaration of nullity of the company’s decision, order to immediately stop the discriminatory practice, damages compensation and/or reinstatement of the employee to their position prior to the violation of the fundamental right. In addition, companies may face a fine ranging between EUR7,501 and EUR225,018 to be imposed by the Labor Inspector. Fines are subject to appeal, firstly before higher administrative bodies and subsequently before the labor courts.

Unfair dismissal

In case of null and void redundancy or disciplinary dismissal (e.g., due to breach of fundamental rights or due to discrimination): automatic reinstatement plus payment of back wages; in some cases, additional damages compensation.

In the case of unfair redundancy or disciplinary dismissal, the employer must choose between:
• Reinstatement plus payment of back wages or

• Payment of a severance compensation, as follows:
  ○ From the hire date until February 11, 2012: 45 days of salary per year of service capped at 42 monthly installments, plus
  ○ From February 12, 2012 to the termination date: 33 days of salary per year of service capped at 24 monthly installments.

In principle, the total severance cannot exceed compensation for 720 days of work, except that the employee is entitled to a higher severance by application of the 45-day rate, in which case compensation is capped at 42 monthly installments.

Employee representatives who are unfairly terminated will have the right to choose between payment or reinstatement.

Failure to inform & consult

Failure to inform the employee representatives of individual redundancy will lead to the declaration of unfairness of the termination.

Failure to comply with information and consultation duties in a collective dismissal will lead to the declaration that the terminations are void and a fine ranging from EUR7,501 to EUR225,018. If the rights of the trade union are violated, an additional uncapped compensation may be imposed (normally between EUR3,000 and EUR6,000).

Failure to inform or entrust in the start of TUPE will result in a fine ranging from EUR751 to EUR7,500, and, in exceptional circumstances, the declaration that the transfer of employees is void.

CRIMINAL SANCTIONS

There are criminal sanctions related to employment issues, such as those linked to work-related accidents and social security fraud.

Generally, legal persons will be held criminally accountable for the felonies committed in their name or on their behalf, and to their benefit, by their legal representatives and de facto or de jure administrators. Legal persons will also be criminally accountable for the felonies committed when perpetrating the corporate activities, and on account, and to the advantage, thereof.
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SWEDEN

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of European Union (EU), so required to implement relevant EU directives. The official currency is the Swedish Krona (SEK). The official language is Swedish.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign company may engage employees in Sweden with proper payroll registrations, subject to business, corporate and tax considerations. Employers are obliged to pay social security charges on top of gross salary and most benefits. The social security charges amount to approximately 31 percent to be borne by the employer. The Swedish personal tax system operates with a progressive rate varying from approximately 29 percent to 55.5 percent, as the austerity tax of 5 percent was abolished as of January 1, 2020.

The employer shall deduct from the gross salary and deliver each employee's personal tax to the Swedish Tax Authority. From January 1, 2019, registered employers additionally receive PAYE forms to complete and send to the Swedish Tax Authority.

PRE-HIRE CHECKS

Required

No pre-hire checks required in general.

Permissible

On immigration compliance. References and education checks are common and permissible with applicant consent. Employers may ask for criminal records, and for specific roles (eg, childcare positions), it is required. Note, however, that criminal records for the purpose of pre-hire checks normally may not be processed electronically due to data privacy restrictions.

IMMIGRATION
Nationals of the Nordic countries, most EU/European Economic Area (EEA) countries and Switzerland are permitted to begin working immediately upon entering Sweden. Most non-EU/EEA, non-Nordic and non-Swiss citizens who intend to enter Sweden to work need a work permit. When employing someone from a non-EU country, the company must notify the Swedish Tax Authority by completing an SKV 1160 form with the name, address and employment period of the employee.

HIRING OPTIONS

Employee

Indefinite, fixed-term, full-time or part-time. An employer may not put a part-time or fixed-term employee at a disadvantage by providing a salary or employment terms that are less favorable than those of employees in a similar situation working full-time or those in permanent employment.

Independent contractor

Independent contractors may be engaged directly by the company. However, engagement may be subject to misclassification exposure. In addition, the hiring of independent contractors may be subject to consultation requirements if the employer is bound by a collective bargaining agreement.

Agency worker

Agency workers may be hired and assigned to perform work under a user undertaking’s supervision and direction. The equal-treatment principle under the Swedish Act on Agency Work requires the employer (ie, the temporary work agency) to ensure that the basic working and employment conditions for the employee who has been assigned to a user undertaking shall be at least those that would have applied if the employee had been employed directly by the user undertaking to perform the same work. As of June 30, 2022, new amendments to the Swedish Act on Agency Work are proposed to enter into force to help agency workers pursue permanent employment and to limit the hiring of agency workers on a permanent basis.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

Within 1 month of the commencement of employment, employees must be provided certain information in writing regarding their employment (eg, name of employer, salary, workplace, vacation and type of employment). Issuing written employment agreements is common best practice and is recommended, but it is also possible to conclude an agreement verbally or through action (but the information obligation mentioned above would apply regardless).

Probationary periods

Permissible. Subject to a statutory limit of 6 months.

Policies

In general, there is no requirement to have written policies, but they are commonly used. It is generally advisable
for an employer to have certain policies (e.g., concerning personal data, unilaterally issued benefits and use of work equipment, such as internet access, computers and mobile phones). An employer with at least 10 employees must have a written work environment policy in place and, if 25 or more employees are employed, the employer is required to establish written documentation regarding the active measures that are taken in order to prevent discrimination and promote equality.

Third-party approval

No requirement.

**LANGUAGE REQUIREMENTS**

No statutory requirements, but it would be advisable to ensure that all employees understand the language of the documents provided.

**MINIMUM EMPLOYMENT RIGHTS**

Employees entitled to minimum employment rights

All.

**Working hours**

Standard working hours are 40 hours per week. Working time in excess of such standard working hours is deemed as overtime. The employer may require employees to work overtime for up to 48 hours over a period of 4 weeks, or 50 hours in 1 calendar month, subject to a maximum of 200 hours per calendar year (i.e., general overtime). An employer may require – provided that there are special reasons and the situation cannot be resolved in any other way – overtime in addition to general overtime, subject to a maximum of 150 hours per calendar year (i.e., additional overtime).

**Overtime**

There is no statutory right to overtime payments. However, collective bargaining agreements typically include a right to overtime payments for employees. The rate payable for overtime depends on the business and any applicable collective bargaining agreements. Moreover, it is common to compensate for overtime by offering 5 additional paid holidays instead.

**Wages**

There are no statutory regulations on minimum wages in Sweden. However, collective bargaining agreements typically include provisions regarding minimum wage and salary. Thus, subject to any collective bargaining agreements and non-discrimination laws, an employer and employee may freely agree upon the level of salary to be paid as well as any future salary increases.

**Vacation**

Employees are entitled to a minimum of 25 days of paid holiday – public holidays excluded – per holiday year after
the first holiday year of employment (i.e., qualifying year), pursuant to the Swedish Holiday Act. For white-collar employees and professionals, 30 days of annual holiday is common (as compensation for no overtime payment), either by individual contract or by a collective bargaining agreement.

Sick leave & pay

On January 1, 2019, new regulation was introduced in the Swedish Sick Pay Act. In the previous regulation, an employee was entitled to sick pay from the employer during absence due to illness from day 2 to 14 of the absence, where day 1 of such absence was a compensation-free day referred to as qualification day (karensdag).

The new regulation abolished the compensation-free day at the start of the sick leave and replaced it with a salary deduction that corresponds to 20 percent of an average week’s sick pay (karensavdrag). After the first 14 days, the Social Insurance Agency takes over the responsibility to pay. Other benefits may be paid in accordance to the individual employment agreement or a collective bargaining agreement.

If an employee is expected to be on sick leave for more than 60 days, their employer must make a plan for how the employee will return to work. The plan should be made within 30 days of the first day of sickness.

In response to the COVID-19 pandemic, the Swedish government has temporarily taken more financial responsibility for employees’ sick pay. For example, in regard to salary deduction (karensavdrag), the Social Insurance Agency (Försäkringskassan) will compensate the employee SEK810 per day. Further, the Swedish government will reimburse employers for sick pay costs that are higher than what can be considered normal. These temporary adjustments are currently expected to stay in force until March 31, 2022.

Maternity/parental leave & pay

Employees are entitled to parental leave under the Parental Leave Act. The mother is entitled to 7 weeks before birth as well as 7 weeks after birth (both included in the 480 days mentioned below). The father is entitled to 10 days in connection with the birth to be taken at the same time as the mother. Parents are also entitled to full parental leave until the child has reached the age of 18 months or, provided that the parent is still in receipt of a full parental allowance, for a period of time after the child has reached 18 months of age.

The employer is not required to pay the employee any salary during the time they are on parental leave, although the employee will accrue holiday during the parental leave as if the employee had worked for up to 120 days or, in case of a sole parent, up to 180 days. Instead, an employee is entitled to a parental allowance from the government. Parental leave is closely related to the right to parental allowance. Parental allowance is paid by the Swedish state for, at most, 480 days, until the child has reached 12 years of age (8 years for children born before 2014). For children born January 1, 2014 and after, parental allowance is paid for, at most, 96 days when the child is between the ages of 4 and 12. Similar rights to parental leave are also available to employees adopting a child. Of the 480 days, a number of days are reserved for each parent respectively: 60 days if the child is born prior to 2016, and 90 days if the child is born in 2016 or later.

DISCRIMINATION

The Discrimination Act covers discrimination on the grounds of sex, ethnic origin, religious or other belief, disability, sexual orientation, age and transgender identity or expression. The Discrimination Act contains
provisions on active measures, supervision and invalidity of discriminatory provisions in individual and collective bargaining agreements, entitlement to compensation and legal proceedings. The employer is required to take positive action to promote equal rights and opportunities irrespective of any of the protected characteristics.

BENEFITS & PENSIONS

In general, benefits are either introduced by the individual contract of employment or by the collective bargaining agreement. The benefits provided to an employee usually depend on their level of seniority in the organization. Common benefits, at least for persons at a more senior level, are additional paid holidays, contributions to a private pension insurance, health and life insurance, a company car or car allowance and contributions from the employer during parental leave in addition to what is paid by the Swedish state. Collective bargaining agreements typically include provisions regarding payment of pension contributions into private pension insurance. Benefits are generally subject to social security charges to be paid by the employer and taxes to be paid by the employee.

DATA PRIVACY

The General Data Protection Regulation (Regulation (EU) 2016/679) (GDPR), applicable since May 25, 2018, applies to the processing of employees' personal data. The employer must ensure that the fundamental requirements for processing of the employees' personal data are fulfilled (e.g., personal data must be correct, adequate and relevant in relation to the purposes of the processing and may not be retained for a longer period than is necessary in light of the purposes of the processing); there must be a legal basis for the processing, such as performance/administration of the employment agreement and relationship; and the employee must receive adequate information regarding the processing. Special rules apply to data transfers outside the EEA. Sweden has also issued national laws and regulations in addition to the GDPR including the Swedish Data Protection Act (2018:218) and the Data Protection Ordinance (2018:19) (the DPA). The DPA regulates general aspects of data protection where the GDPR allows (e.g., processing of social security numbers and processing of data pertaining to criminal offenses. The DPA entered into force on May 25, 2018.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

The Swedish Employment Protection Act (EPA) enacts the European Union’s Acquired Rights Directive regarding business transfers. The EPA provides that, in the event of the transfer of an undertaking or business, or a part thereof, from one employer to another, the rights and liabilities of the employer are also transferred. The transferor and transferee have a duty to inform and consult with trade unions if the respective company is bound by a collective agreement, or if any trade union whose members employed by the company will be affected by the transfer. Any dismissal connected to the transfer would be in breach of the EPA, unless for an economic, technical or organizational reason.

EMPLOYEE REPRESENTATION

Sweden has a high rate of trade union affiliation among employees. The Co-Determination Act (medbestammandelagen) consists of rules regulating collective agreements, rules of procedure regarding
negotiations, consultations and employee representation. Pursuant to the Co-Determination Act, both employees and employers have the right to belong to an organization of employees or employers and to exercise the rights of membership in such organization. The right of association may not be infringed upon.

Collective bargaining in Sweden is centralized, and historically, bargaining in the private sectors has taken place on 3 levels: national (between the Confederation of Swedish Enterprises and the employee federations); industrywide (between industrywide organizations on both sides); and local (between the company and the local union). Legally binding agreements are concluded at all levels of bargaining.

The concept of works councils, aside from European Works Councils, is not recognized in Sweden. Instead, employees' influence is safeguarded by the trade unions.

**TERMINATION**

**Grounds**

The EPA requires that the employer has "just cause" in order to terminate an employment. The EPA distinguishes between termination due to personal reasons (eg, poor performance, misconduct or disloyalty) or economic reasons (eg, restructuring, reorganization or closing down of business). Redundancy is generally deemed to constitute just cause for termination under the EPA – the employer must, however, follow the substantive and the formal rules laid down by the EPA. Conversely, termination due to personal reasons is deemed a last resort by the courts, and the burden of proof that the misconduct amounts to just cause is on the employer. An employee that has grossly neglected their obligations towards the employer may be summarily dismissed (also known as termination without notice).

**Employees subject to termination laws**

The EPA applies regardless of employment period and form of employment, and to all employees, with only a few minor exceptions (eg, employees in managerial or similar positions in respect of salary, position and job assignment; members of an employer’s family; employees engaged in the employer’s household; and employees assigned public temporary work).

**Restricted or prohibited terminations**

If employment is terminated due to redundancy, the notice period for an employee on full parental leave does not commence until the employee returns to work, or the date the employee would have returned to work. If an employee is given notice of termination during the employee's vacation, the notice of termination shall be deemed effective no earlier than the day after the vacation ends.

Moreover, termination of employment may not be in violation of applicable anti-discrimination laws (eg, the Discrimination Act and the Parental Leave Act). Employees who also are trade union representatives (fackliga förtroendeman) may be protected under the Trade Union Representative in the Workplace Act (lag om facklig förtroendmans ställning på arbetsplatsen).

The Swedish Government has proposed amendments to the EPA which, among other things, concern the rules for termination. The new rules have yet to be accepted by the Parliament, but are proposed to enter into force on June 30, 2022.
Third-party approval for termination/termination documents

Not required.

Mass layoff rules

If more than 5 employees may be affected by a potential redundancy, the employer is obligated to notify the Swedish Public Employment Service in writing. Additionally, standard redundancy rules under the EPA must be adhered to.

Notice

The minimum statutory period of notice for termination for the employer is 1 month, and the period of notice increases by 1 month for every 2 years of service, up to a maximum of 6 months when the employee has a length of service of 10 years or more. However, it is permissible to have longer notice periods, and this is common both in individual employment contracts and in collective bargaining agreements. A CEO should, according to Swedish case law, be provided a notice period of at least 6 months, including any severance pay (please see further below), upon terminating the employment.

The EPA includes extensive formal and substantive rules to observe in relation to termination. An employer who intends to terminate an employee’s employment for personal reasons shall notify the employee and their trade union at least 2 weeks in advance prior to handing over the termination notice. Thereafter, the employee and their trade union have a right to request consultations. The termination cannot be effected until the consultations are concluded. In case of termination without notice (ie, summary dismissal), the notification shall be given at the latest 1 week before the termination becomes effective.

Statutory right to pay in lieu of notice or garden leave

Employees are both entitled to and have a duty to work during the notice period. Garden leave and payment in lieu of notice is subject to the employee’s consent.

Severance

Severance pay is not mandatory in a case of termination of employment by the employer. However, at least in mid-size to large companies, it is not uncommon to include a severance payment on top of the notice period for a managing director (typically not covered by employment protection) in the employment agreement. For the managing director, notice and severance pay combined normally corresponds to 6 to 12 months’ fixed compensation. Additionally, in a specific termination situation, it is common for the employer to pay a severance payment in addition to notice in a settlement agreement, especially if it is unclear whether just cause for termination exists or if there are other issues (eg, non-compliance with the last-in-first-out rule, or LIFO).

POST-TERMINATION RESTRAINTS

There are no specific statutory rules under Swedish law prohibiting post-contractual restraints other than that
they must be reasonable in order to be enforceable. Instead, the rules are normally contained in collective bargaining agreements and individual employment agreements, which may allow post-contractual restraints under certain circumstances. However, such restraints may be deemed unreasonable and set aside or adjusted by a Swedish court.

Non-competes

The period of restriction depends on how long such a restriction can be objectively justified. A period of 9 months is common. In some cases, it may be possible to have a longer period depending, inter alia, on the expected lifetime of the employer’s trade secrets to which the employee is privy. Nevertheless, the duration should generally not be longer than 18 months. In order for a non-competition clause to be valid, the employee must be entitled to compensation during the restricted period. The compensation does not need to exceed 60 percent of the employee’s previous salary with the employer. Moreover, a non-competition clause may only be used where it is justified – for example, for employees with key or management positions with access to trade secrets.

Customer non-solicits

Permissible, but may be adjusted by a court ruling if deemed unreasonably strict (e.g., due to the length of the restrictive period).

Employee non-solicits

Permissible. Non-solicitation clauses should not, however, extend beyond the legitimate interest to equalize the competitive advantage gained by the employee through the knowledge of the former employer’s employees.

Pursuant to case law, the restricted period for a non-solicitation clause should normally not exceed 6 months.

WAIVERS

Enforceable. The employee may sign a settlement agreement waiving statutory rights.

REMEDIES

Discrimination

Any individual or legal entity that violates prohibitions against discrimination and retaliation, or fails to fulfill obligations to investigate and take measures against harassment, may be ordered to pay compensation to the individual who has been affected by the breach.

Employees may challenge the lawfulness of a termination of employment due to redundancy or due to personal reasons. If the termination is found unjust and deemed invalid, the employee is entitled to reinstatement, compensation for loss of income and damages for other losses suffered and the infringement of the employee’s rights. If the employer refuses to comply with a court’s judgment regarding reinstatement, the employer is additionally liable for damages equal to a certain number of monthly salaries, as a main rule ranging from 16 to 32. If the employee does not ask for reinstatement, the employee will be entitled to economic damages to cover lost salary, capped at a maximum of 32 monthly salaries. In addition to economic damages, the employee will be entitled to general damages.
The protection of whistleblowers is regulated by the Swedish Act on protection against reprisals for workers reporting serious irregularities (2021:890) (the Whistleblower Act). The Whistleblower Act stipulates that individuals who are subjected to reprisals by their employer in violation of the provisions in the Whistleblower Act are entitled to damages.

**Failure to inform & consult**

Failure to inform and consult with relevant trade unions may cause a liability to pay damages to trade unions. Damages seldom exceed SEK150,000 per breach.

**CRIMINAL SANCTIONS**

An employer who intentionally or negligently fails to comply with an order or prohibition issued by the Swedish Work Environment Authority pursuant to certain regulations may be fined or sentenced to imprisonment for a maximum of 1 year.

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SWITZERLAND

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Not a member of the European Union (EU), but member of the European Free Trade Association (EFTA). Swiss Francs (CHF). German, French, and Italian.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity can generally engage employees in Switzerland, subject to business and corporate tax planning considerations, and provided the employee can validly work in Switzerland.

Social charges vary according to canton and the employer’s chosen pension fund scheme. Employer’s contributions must be paid in addition to the gross salary, at approximately 12 to 20 percent of the gross salary. Employee’s contributions must be deducted from the employee’s gross salary, at approximately 10 to 17 percent of the gross salary. The employer must deduct each employee’s tax at the source, where applicable.

PRE-HIRE CHECKS

Required

Immigration compliance. Criminal and credit reference checks for specific roles (eg, attorneys-at-law, bank executives).

Permissible

Criminal and credit reference checks are only permissible if they are relevant to the proposed work and are subject to proportionality requirements. Reference and education checks are common and permissible with the applicant’s consent.

IMMIGRATION

For all non-Swiss nationals, a work permit is required, but EU/EFTA citizens may generally start working as soon as the request is filed. Work permits are generally easily granted for EU/EFTA nationals. The current immigration
system takes into account the global economic interests of Switzerland as well as the integration of immigrants in Switzerland. In certain circumstances and conditions, priority is granted to unemployed workers in Switzerland: employers have the obligation to notify vacant positions to regional placement centers for certain professions where the national unemployment rate is at least 5 percent.

**HIRING OPTIONS**

**Employee**

Indefinite, fixed-term, with a maximum duration, full-time or part-time.

**Independent contractor**

Independent contractors can be engaged with such status only if they can organize their time and duties themselves and effectively bear the economic risk related to their activity. Engagement may be subject to misclassification exposure.

**Agency worker**

Generally, agency workers must be formally employed by specifically authorized companies. If an extended collective employment agreement applies to the receiving company's employees, agency workers will also benefit from its provisions regarding salary and work duration.

**EMPLOYMENT CONTRACTS & POLICIES**

**Requirements**

The employee should at least receive, within the first month of employment, written indication regarding the names of the parties, the starting date, the position, the salary and possible additional salary elements, and the weekly work duration.

Mandatory legal provisions must be observed, as well as collective labor agreements whose scope has been extended by the state to all employers in a specific industry – which is the case, for instance, in the construction industry, the furniture industry, the hospitality and restaurant sectors, private security services and retail.

**Probationary periods**

Permissible. Up to 3 months (ie, the statutory limit).

**Policies**

So-called "industrial companies" (ie, factories manufacturing and processing goods and enterprises using machines and/or automatic processes) must have a written health and safety policy and, where necessary, a disciplinary measures policy. These are optional for other companies. It is common to have expense-reimbursement policies. Specific grievance policies are highly recommended.

**Third-party approval**
An industrial company’s mandatory health and safety policy must be reviewed by the Cantonal Labor Authority.

**LANGUAGE REQUIREMENTS**

No statutory requirements.

**MINIMUM EMPLOYMENT RIGHTS**

Employees entitled to minimum employment rights

All, except that top managers are not subject to a specific maximum work duration.

**Working hours**

There is a limit of 45 hours per week for most workers (ie, workers employed in industrial enterprises, as well as for clerical, technical and other employees, including sales staff of large retail trade enterprises); supplementary time is possible within appropriate limits (eg, in case of emergency, and generally for a maximum of 2 hours a day and 170 hours a year). There is a limit of 50 hours per week for other workers; supplementary time is possible within appropriate limits (eg, in case of emergency, and generally for a maximum of 2 hours a day and 140 hours a year). Generally, working hours of employees should be recorded.

**Overtime**

Overtime must be compensated at 125 percent. The employee can consent to compensation by time off. As long as overtime is not over the maximum legal duration, the employer and the employee can have a written agreement providing for other compensation (eg, at 100 percent instead of 125 percent), or even no additional compensation at all, when the agreed salary arguably compensates the overtime and overtime is not much more than what could be expected when signing the contract.

**Wages**

No general legal minimum wage, except in the Neuchatel canton (minimum CHF20.08 per hour, adapted every year to the consumer price index), in the Jura canton (minimum CHF20 per hour, adapted every year to the consumer price index), in the Geneva canton (minimum CHF23.27 per hour, adapted every year to the consumer price index) and in the Ticino canton (minimum CHF19 per hour, adapted every year to the consumer price index). Minimum wages are sometimes stated in specific collective labor agreements and specific standard employment agreements.

**Vacation**

At least 4 weeks’ vacation per year (5 weeks for employees under 20 years old), and generally 9 public holidays (depending on the canton).

**Sick leave & pay**

Sick leave is paid in proportion to increasing seniority. Companies and employees can opt for a derogatory scheme (eg, loss of earning insurance providing for 80 percent of salary, up to 720 daily indemnities).
Maternity/parental leave & pay

16 weeks’ maternity leave after childbirth (14 weeks paid by the federal insurance and 2 additional weeks in the Geneva canton). A 10-day paternity leave to be taken within the first 6 months following childbirth.

DISCRIMINATION

Gender discrimination is directly prohibited. Other kinds of unjustified discrimination are indirectly prohibited (i.e., only if the employee is able to prove that the discrimination has led to a violation of their personality – that is, when they have suffered painfully worse treatment than other employees, without any objective reason).

BENEFITS & PENSIONS

Old age, survivors and disability risks are covered by a 3-tier system:

- first tier: mandatory social security contributions (AVS/AI);
- second tier: mandatory occupational insurance (the employer can agree to an occupational insurance plan over and above the mandatory requirements);
- third tier (optional and not related to the employment relationship): voluntary payments with tax exemption.

DATA PRIVACY

In general, employees should be notified of any processing of their personal data (and, in certain cases, give consent). Registrations with the Federal Data Protection Commissioner are required in certain circumstances. Special rules apply to data transfers outside of Switzerland. Significant restrictions on monitoring email and internet use.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Automatic transfer of all employment agreements in case of transfer of business undertakings – mostly asset deals. Duty to inform and consult with employee representatives, if any – or, if none, with the employees.

EMPLOYEE REPRESENTATION

Workers are entitled to elect a representative in companies with more than 50 workers. Trade unions are prevalent in certain sectors. Industry-level collective bargaining agreements are common. Trade-union arbitrators often act as conciliators when there is a collective labor dispute.

TERMINATION
Grounds

Termination of indefinite-duration contracts is possible for any reason, except for "abusive reasons." Certain reasons cannot serve as a fair basis for a termination (e.g., individual characteristics, complaints made by the employee regarding their working conditions or their agreement not being respected, trade-union membership), and a fair process must be followed in any case.

Employees subject to termination laws

All employees.

Restricted or prohibited terminations

Termination is restricted/prohibited when an employee is unfit for work (e.g., due to an accident or sickness) for limited periods increasing with seniority (30 to 180 days), is pregnant or in military service, or within the 16 weeks following giving birth. These main examples are non-exhaustive.

Third-party approval for termination/termination documents

No requirement for third-party approval. No particular termination document is generally required. If contractually agreed, the termination must be given in writing.

Mass layoff rules

Information and consultation rules apply when at least 10 employees are to be made redundant within 30 days, depending on various thresholds. The employer must also notify the Cantonal Labor Authority of the result of the consultation.

Depending on the canton, specific rules may also apply when at least 6 employees are dismissed within the same calendar month.

In bigger companies (i.e., 250 employees and more), the employer must hold negotiations with the aim of preparing a social plan if it intends to make at least 30 employees redundant within 30 days (redundancies over a longer period of time that are based on the same operational decision are counted together). In other cases, a social plan is not mandatory unless a collective bargaining agreement provides for it.

Notice

Unless otherwise stated in the contract: 7 calendar days within the probation period; 1 month’s notice to the end of a month during the first year of service, then 2 months’ notice to the end of a month from the second to ninth years of service, and 3 months’ notice to the end of a month thereafter.

The contract can provide for different notice periods, but no less than 1 month’s notice after the probation period.

No notice required for terminations for very serious misconduct (such terminations, in principle, must be notified within 2 to 3 days after the breach is discovered).

Statutory right to pay in lieu of notice or garden leave
No.

Severance

Due only to employees of at least 50 years of age and 20 years or more of service, provided there is a shortfall in pension benefits. Due to this last condition, this statutory entitlement almost never applies. The severance amount would be between 2 to 8 months' pay.

Written agreements and collective labor agreements may adopt specific provisions.

**POST-TERMINATION RESTRAINTS**

Non-competes

Possible, provided the working relationship allows for employees to have knowledge of their employer’s clientele or manufacturing or commercial secrets and where the use of such knowledge might cause the employer substantial harm. Non-competition clauses based on knowledge of the client are, in principle, unacceptable in circumstances where the relationship between employees and clients is essentially a personal one, based on employees' abilities and their particular relationships with clients. The restraint must be appropriately restricted with regard to place, time and scope so that it does not unfairly compromise the employee's future economic activity. Typically no more than 1 year, if based on the knowledge of the employer's clientele, and no more than 3 years, if based on knowledge of manufacturing and commercial secrets.

Customer non-solicits

Permissible, with similar restrictions to non-competes.

Employee non-solicits

Permissible, with similar restrictions to non-competes.

**WAIVERS**

Waivers of mandatory entitlements agreed upon during employment and the month after termination of employment are only enforceable if the waiver is made against well-balanced concessions.

**REMEDIES**

Discrimination

- Gender discrimination at hiring: up to 3 months' salary.
- Sexual harassment: up to 6 months' pay based on the Swiss average salary.
- Moral sufferance: generally no more than CHF25,000.
Unfair dismissal

Maximum penalty of an amount equivalent to 6 months' salary (rarely more than 4 months). Unfair dismissal decided in retaliation against a gender claim may lead to re-instatement in the company (rarely invoked).

Failure to inform & consult

In regard to mass redundancies, there are 2 possible consequences:

i. The employment agreements are not considered terminated as long as the Cantonal Labor Authority has not been notified of the results of the consultation;
ii. The dismissal is considered as unfair, giving right to compensation capped at 2 months' salary.

Transfer of business undertakings: general remedies (reimbursement of damages). Merger, demerger and transfer of assets performed under the Federal Merger Act: possibility of blocking entry in the commercial register

CRIMINAL SANCTIONS

Failure to comply with health and safety legal requirements; undeclared or illicit work; sexual or psychological harassment.

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TAIWAN, REPUBLIC OF CHINA

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. The official currency is the New Taiwan dollar (TWD). The official language is Mandarin.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Foreign companies cannot directly engage employees in Taiwan but may set up branches, subsidiaries and representative offices, all subject to different registration procedures.

Withholdings for taxes, labor insurance, pension and health insurance.

PRE-HIRE CHECKS

Required

Work permit and residency compliance.

Permissible

Non-criminal record certificates, reference and education checks are permissible with applicant consent, although some restrictions apply.

IMMIGRATION

All foreign nationals, including Hong Kong and Macau citizens, require work permits to work in Taiwan. Chinese citizens are not considered foreigners but are subject to special rules, depending on the purpose of their stay.

Companies employing foreigners are required to abide by industry, quota and credential restrictions.

HIRING OPTIONS
Employee

Fixed-term and non-fixed contracts. Full-time or part-time. Some foreign employees may be subject to restrictions regarding part-time employment.

Independent contractor

Independent contractors fall outside the scope of the Labor Standards Act (LSA). Courts will review the degree of control over a worker in deciding whether they are subject to the LSA, and are, in fact, an employee.

Agency worker

An agency worker is called a "dispatch worker" in Taiwan and is subject to government restrictions.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

Employment contracts are not mandatory for Taiwanese nationals but are common. Employment contracts are required for foreign employees.

Probationary periods

Permissible, but there are no provisions under the LSA which govern probationary periods. Accordingly, advance notice and severance are required for terminations.

Policies

Work rules containing health, safety and grievance policies are required for organizations with more than 30 employees.

Third-party approval

Foreign worker contracts are required to be submitted to the Ministry of Labor. Work rules must be submitted to the local labor authorities.

LANGUAGE REQUIREMENTS

No statutory requirements, but any supporting documents must be presented to the courts in Chinese in the case of any disputes.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All.
Working hours

8 hours per day and 40 hours per week, with 2 days off each week. A worker may only work overtime on 1 of the 2 days off. Depending on the industry, and with approval from a labor-management conference, employers may adopt various types of flexi-time schedules. The 2-week flexible schedule allows a worker to distribute up to 2 working hours to other days, with a limit of not more than 48 hours a week. For a 4-week schedule, a worker may distribute working hours within 4 weeks, but the distribution must not exceed 2 hours a day, and there must be at least 2 days off in a span of 2 weeks. The LSA also allows for a redistribution of hours over 8 weeks, provided that regular working time is no more than 8 hours per day and not over 48 hours per week.

Overtime

Total working time (ie, normal hours plus overtime) cannot exceed 12 hours per day. Overtime pay is 1/3 of the normal hourly rate for less than 2 hours overtime, 2/3 of the rate for 2 to 4 hours of overtime and double pay during national emergencies. Working on a 6th day in 1 week is considered entirely overtime, and the overtime pay is calculated according to number of hours worked.

Wages

Starting January 1, 2022, the minimum wage is TWD25,250 a month and TWD168 an hour.

Vacation

3 paid days' vacation leave after working for 6 months; 7 days of paid vacation leave after 1 year; 10 days after 2 years; 14 days after 3 years; 15 days after 5 years; and, after 10 years, 1 additional day per year until 30 days. 12 days off for public holidays, with varying dates.

Sick leave & pay

30 days of paid sick leave per year. Employees receive 1/2 pay when on sick leave.

Maternity/parental leave & pay

8 weeks of maternity leave at full pay (1/2 for employees who have worked less than 6 months). Those suffering a miscarriage are also entitled to take leave. Male employees may take 7 days of paid paternity leave which can be used for both paternity days and accompanying their spouses for prenatal checks. Unpaid parental leave is granted for up to 2 years for each child under 3 years old.

DISCRIMINATION

Characteristics protected from unlawful discrimination and harassment include age, disability, class, thought, facial features, language, gender reassignment, marital status, political party, pregnancy or maternity, race, religion or belief, sex or sexual orientation. With the recent implementation of the Middle-aged and Elderly Employment Promotion Act, persons aged 45 to 65 and those above 65 are afforded more protection from age discrimination and provided with more employment stability, and the employment of these persons will be promoted, which will create more job opportunities for the middle-aged and elderly. Employers who are found to discriminate on the basis of age will be fined.
BENEFITS & PENSIONS

Labor and National Health Insurance systems covered through payroll deductions and contributions. There are 2 pension systems: the older LSA and New Pension Act. Foreigners are only allowed to participate in the LSA pension system, unless they are married to a Taiwanese citizen or are a permanent resident.

DATA PRIVACY

The collection, processing and use of employee personal information is governed by the Personal Data Protection Act. The Act has notice and consent requirements that may be applicable to the collection, processing and use of employee information. This applies to cross-border transmission of the information or any use outside of the norms of a domestic employment relationship.

Under amendments to the Employment Service Act that came into force in late 2012, the amount of personal information that an employer may request from an employee or prospective employee has been severely restricted. Prohibited or restricted requests for personal information include physiological information (eg, medical tests and fingerprints), psychological information (eg, psychiatric tests and polygraph tests) and personal lifestyle information (eg, financial records, criminal records, family information/plans and background checks).

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

There is no automatic transfer of employees in an asset sale. The new employer must inform the employees of the new terms and regulations and obtain the employees’ formal consent to the offer of new employment. If an employee refuses to accept the new terms and conditions, the previous employer must make severance payments to the employee. There is also a duty to inform and consult with employee representatives (ie, unions).

In a merger and acquisition situation, 30 days’ advance notice of the acquisition and the terms and conditions of employment with the new employer must be provided to the employees. Employees then have 10 days to accept or decline the offer with the new employer. The employee’s failure to respond presumes consent. Past seniority must be recognized.

EMPLOYEE REPRESENTATION

Unions are allowed, but they are highly regulated. 30 percent of the labor force are union members.

For businesses with more than 30 employees, which are regulated by the LSA, it is mandatory to have a labor management council. In practice, however, these councils are rarely used as many larger corporations instead have unions.

TERMINATION

Grounds

Termination without notice or severance is allowed in cases where an employee is involved in acts of violence,
serious contract or rule breaches, equipment abuse, misrepresentation of qualifications, unjustified absence from work for 3 days or a jail sentence that cannot be commuted to a fine.

Termination is allowed in other cases, but advance notice and severance are required. Employers may terminate the employment of employees for redundancy only where:

- The employer is ceasing business or the ownership of the employer is being transferred
- The employer suffers a loss or is curtailing business operations
- The operations of the employer are suspended for more than 1 month due to force majeure (ie, when performance of contractual obligations is prevented by an event or circumstance outside the parties' control) or
- The business nature of the employer has been altered, a reduction in the number of employees is necessary and there are no other suitable job openings for the redundant employees.

Employees may also be terminated on performance grounds where the employee is proven to be incapable of carrying out the work assigned to them.

Employees subject to termination laws

Most employees (95.3 percent), including foreigners, are covered under the LSA.

Restricted or prohibited terminations

No prohibitions, although termination is not allowed if there are available job openings for redundant employees.

Third-party approval for termination/termination documents

Not required, absent a mass layoff.

Mass layoff rules

The Mass Layoff Protection Act (MLPA) applies depending on the number of employees and time frame. Where the MLPA applies, 60 days’ advance notice and public announcements must be given to:

- The labor union of which the affected employees are members, if applicable
- The employees’ representatives at the Labor-Management Conference and
- The employees affected by the redundancies.

Further, the employer must notify the local labor authorities of the redundancy plans. Within 10 days of the date of notification of the redundancy plans, the employer and the affected employees must engage in discussion to reach an agreement regarding the mass redundancies.

Notice

The Labor Standards Act requires 10 days’ notice after 3 months to 1 year of employment, 20 days for 1 to 3
years’ employment and 30 days for 3 years or more. If an employment contract specifies a longer period of notice than required by statute, it will be held against the employer but not against the employee. Notice is not required in cases of very serious misconduct.

Statutory right to pay in lieu of notice or garden leave

Both are permitted. Garden leave is not specifically provided for under the labor laws, but it is not prohibited.

Severance

Generally, severance is 50 percent of average monthly pay per year of service, up to a maximum of 6 months’ pay. For foreigners and local employees still under the LSA pension system, severance is 1 month's average pay for each year of service.

POST-TERMINATION RESTRAINTS

In order for an employer/employee non-competition agreement or provision to be valid and enforceable, the following requirements must be met:

- There are special interests of the employer that deserve protection The employee must occupy a certain level of position in the company
- The restrictions on the new employment, with respect to the employee, duration, geographical area and professional activities, should be reasonable
- A competitive action by the employee would be a violation of trust and faithfulness to the employer
- Employees must be compensated for loss from the non-competition obligation, separate from salary received from employment, and
- The amount of any penalty must be reasonable.

Non-competes

Permissible for restraint periods of up to 24 months.

Customer non-solicits

Permissible for restraint periods of up to 24 months.

Employee non-solicits

Permissible for restraint periods of up to 24 months.

WAIVERS

Waivers of statutory claims may not be enforceable in Taiwan.
REMEDIES

Discrimination

Penalties range from TWD300,000 to TWD1.5 million. Severance and pay in lieu of notice may also be required in dismissal cases.

Unfair dismissal

Employees are usually entitled to severance and pay in lieu of notice. In unfair dismissal cases regarding pregnancy, miscarriage or occupational injury, penalties range between TWD90,000 and TWD450,000. Employees who make a demand for reinstatement may seek award of back pay from the time of termination to the time of reinstatement, and that period may include litigation and appeals.

Failure to inform & consult

While consultation is required for a mass layoff, there is no requirement to consult the employees in case of individual redundancies unless a mass layoff is involved. Failure to inform would result in the employer being required to pay statutory severance as well as penalty in lieu of notice. Penalties range from TWD100,000 to TWD500,000.

CRIMINAL SANCTIONS

Not a concern.

KEY CONTACTS

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THAILAND

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law based on various laws and practices, particularly the Napoleonic Code and German civil law. The official currency is the Thai Baht (THB). The official language is Thai.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity may engage employees in Thailand subject to certain business and tax considerations and proper payroll registration through a local entity acting on behalf of the foreign entity.

The employer must withhold tax at source, file a withholding tax return (i.e., Form PND 1, 2 or 3, as the case may be) and remit the amount of tax withheld to the District Revenue Office.

PRE-HIRE CHECKS

Required

Visa and work permit compliance. Age of the employee; the employee must not be younger than 15.

Permissible

The use, publication or distribution of any information obtained requires consent from the candidate who has given such information. If the information is regarded as “personal data” under the Personal Data Protection Act B.E. 2562 (2019) (PDPA), the employer who collects, uses and/or discloses such information must notify the employee of the purposes of such collection, use and/or disclosure and obtain such employee’s consent.

A candidate may be asked to undergo a medical examination, but this should only be after the employer has made a conditional offer of employment to a selected candidate.

If criminal or education checks are carried out or employer references are sought, the candidate’s consent should be obtained.

An employee’s medical examination qualifies as “sensitive personal data” under the PDPA. Therefore, the explicit
consent of the candidate should be obtained prior to the employer processing such information. This also applies to criminal checks as criminal records are also considered sensitive personal data.

**IMMIGRATION**

A foreign person intending to work in Thailand must obtain a valid non-immigrant business (B) visa before entering Thailand and a work permit in Thailand before commencing any work.

**Visa**

The applicant must apply for a non-immigrant business (B) visa at the Royal Thai Embassy or Consulate before entering Thailand.

The B visa initially permits the applicant to stay in Thailand for a period of 90 days. The foreign employee must leave Thailand by the expiry date or apply for an extension of stay with the Thai Immigration Bureau. A 1-year visa may be granted to an applicant whose initial non-immigrant business (B) visa has 30 days remaining.

Where the employing company has registered capital or total current assets in excess of THB30 million and the foreign employee’s role is at management level or in the nature of a specialist, a visa extension may be requested via the One Stop Services Center.

After the work permit has been issued for 1 month and the 1st month of salary has been paid with tax withheld, the expatriate may apply for an extension of stay for 1 year with the Thai Immigration Bureau, and the process will be approved within 1 business day at the One Stop Services Center.

**Work permit**

Once the employee has entered Thailand, a work permit application may be made. There must be 4 Thai employees for every 1 foreigner, and the employer must have paid up registered capital of at least THB2 million per foreign employee, except where the employer obtains promotional privileges from the Board of Investment (BOI) or other applicable exemptions apply. Processing the work permit application normally takes 2 weeks.

Where the employing company has registered capital or total current assets in excess of THB30 million and the foreign employee’s role is at management level or in the nature of a specialist, the work permit will be issued within 1 business day at the One Stop Services Center.

**HIRING OPTIONS**

**Employee**

A "hire of services" is a contract whereby a person (ie, the employee) agrees to render services to another person (ie, the employer) who agrees to pay remuneration for the duration of services. Employment may be full-time, part-time, definite or indefinite.

**Independent contractor**

A "hire of work" is a contract whereby a person (ie, the contractor) agrees to complete work for the service
recipient, who agrees to pay remuneration upon completion of the work. In general, the service recipient does not have the power to control the contractor. Unlike an employee, an independent contractor under a "hire of work" contract is neither protected nor entitled to employment rights under the Labor Protection Act B.E. 2541 (1998) (LPA) nor the Labor Relations Act B.E. 2518 (1975) (LRA).

**Agency worker**

According to the LPA, where an employer assigns another person to recruit a worker, it is not a job procurement business operation and such work is part of the manufacturing process or the work is for part of a business for which the employer is responsible, the employer shall be deemed to be the joint employer of the worker as if they were contracted under a hire of services contract by the employer (whether or not the employer supervises the work or is responsible for the payment of wages to the worker). The worker is entitled to claim for any benefit against the employer or such other person, and the employer will be deemed to be the employer of the worker as if the employee were engaged by them directly. However, the employer may recover any payment made to the worker from such other person if there is an agreement providing for such reimbursement.

**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

There is no requirement under Thai labor laws to have a written employment contract. However, in practice, it is advisable to set out key terms and conditions of employment in writing as those terms shall be considered working conditions.

**Probationary periods**

Permissible. Normally, probation should not exceed 119 days as an employee who has worked for 120 days or more is entitled to severance pay at the prescribed rate.

**Policies**

Where the employer employs 10 or more employees, “work rules” are mandatory and must be publicized at the workplace within 15 days starting from the date that the employer employs 10 or more employees. A copy of the work rules must be kept at the workplace, but the work rules may also be provided to employees electronically (eg, emails or intranet). These must be provided in the Thai language and, as a minimum requirement, contain the following information: working days; regular working hours and rest periods; holidays and rules for taking holidays; rules concerning overtime work and work on holidays; date and place of payment of basic pay, overtime pay, holiday pay and holiday overtime pay; leave and rules for taking leave; discipline and punishment; submission of complaints; and termination of employment, severance pay and special severance pay.

In addition, a workplace with 20 or more employees shall have a written working conditions agreement which will form part of the employees' contractual employment terms. This should include as a minimum:

- Employment or working conditions
- Working days and hours
- Wages
• Welfare

• Termination of employment

• Petition procedure for the employee and

• An amendment or renewal procedure of the working condition agreement.

If it is unclear whether there is a working condition agreement, the work rules shall be treated as the working condition agreement.

Third-party approval

Not required.

LANGUAGE REQUIREMENTS

No statutory requirement except for work rules which must be in Thai and in compliance with the LPA.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

Employees employed under a hire of services (including agency workers), whether under open-ended, fixed-term, full-time or part-time employment, are entitled to minimum employment rights.

Working hours

Must not exceed 8 hours per day and 48 hours per week with a rest period of at least 1 hour for every 5 consecutive hours worked. The rest period may be split into intervals of not less than 20 minutes or taken at one time, although an employee may agree not to have a rest period if the work necessitates continuous performance and stopping may damage the work or the work is urgent. An employee is also entitled to at least 1 day off per week, and the interval between days off shall be no longer than 6 days.

Work which may be harmful to the health or safety of the employees as prescribed by Ministerial Regulations shall not exceed 7 hours per day and 42 hours per week.

Overtime

No employer shall be permitted to require an employee to work overtime on a working day except with prior consent of the employee on a case-by-case basis. Where the nature or type of work necessitates continuous performance and stoppage may damage the work, or where the work is urgent (or in other circumstances prescribed in the Ministerial Regulations), the employer may require the employee to work overtime as deemed necessary.

An employer is strictly prohibited from requiring an employee to work overtime on a working day if the employee
is under 18 years of age or the work may be harmful to the health or safety of the employees as prescribed by Ministerial Regulations.

Where the overtime work is for more than 2 hours, the employer shall arrange for the employee to have a rest period for not less than 20 minutes before the employee commences the overtime work.

Where an employer requires an employee to work overtime on a working day, the employer must pay overtime pay to the employee at a rate of not less than 1.5 times the hourly wage rate for the number of hours worked or, where an employee receives wages on a piece rate, not less than 1.5 times the piece rate for work done.

Where an employer requires an employee to work overtime on a holiday, the employer must pay holiday overtime pay to the employee at the rate of not less than 3 times the hourly wage rate for the number of hours worked; or, where an employee receives wages on a piece rate, at not less than 3 times the piece rate for work done.

Where an employer requires an employee to work on a holiday (ie, a weekly holiday, public holiday or annual holiday), the employer must pay holiday pay to the employee at the following rates:

- For an employee who is entitled to wages on holidays, payment in addition to wages at a rate at least equal to the hourly wage rate for the number of hours worked; or, where an employee receives wages on a piece rate, not less than 1 payment at the piece rate for work done

- For an employee who is not entitled to wages on holidays, the payment shall be not less than 2 times the hourly wage rate for the number of hours worked; or, where an employee receives wages on a piece rate, not less than 2 times the piece rate for work done

The hours of overtime work and the hours of holiday work in total must not exceed 36 hours per week.

Wages

Minimum wage of THB313 to THB336 per day, depending on the province where the work is performed (e.g., THB331 in Bangkok). The minimum rates for skilled workers from May 1, 2020 are up to THB900 per day, depending on their role.

Vacation

An employee who has worked consecutively for 1 full year is entitled to an annual holiday with pay of not less than 6 working days during the following year, which shall be fixed in advance by the employer or fixed as agreed by the employer and employee. In the following year, the employer may grant additional vacation beyond the minimum 6-day entitlement. 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 years. For an employee who has not completed 1 year of service, the employer may set annual holidays for the employee on a pro rata basis.

In addition, employees are entitled to at least 13 public holidays per year, including the National Labor Day, as prescribed and announced in advance by the employer.

Sick leave & pay
An employee is entitled to sick leave for as many days as the employee is ill. The employee is entitled to payment of their ordinary wages for up to 30 days. Where the employee takes 3 consecutive days' sick leave, the employer may require the employee to present a medical certificate issued by a First Class medical practitioner or by a government clinic or hospital.

**Maternity/parental leave & pay**

A female employee who is pregnant is entitled to a period of 98 days' maternity leave. The leave includes check-ups before delivery, during which she will be entitled to payment of her ordinary wages for 45 days.

There is currently no statutory paternity leave provided for the private sector. Paternity leave of 15 days may be given (with payment equal to 15 days' salary) to public servants.

There are other leaves to which the employee is entitled, namely sterilization leave, business leave, military service leave, and training and development leave.

**DISCRIMINATION**

The Thai Constitution prohibits discrimination and the unequal treatment of employees. All persons are equal and shall enjoy equal protection under the law. Unjust discrimination against a person on the grounds of origin, race, language, sex, age, physical or health condition, personal status, economic or social standing, religious belief, education or political views which do not contradict the Thai Constitution, or on other grounds, is not permitted.

The LPA also provides for equality in the workplace for employees and requires an employer to treat male and female employees equally in their employment, unless the nature of the work or working conditions does not allow the employer to do so.

An employer must also set equal wages, overtime pay, holiday pay and holiday overtime pay to be paid to employees whose work is of the same nature and quality and equal quantity or same value, notwithstanding whether the employees are male or female.

The Thai Labor Standards Corporate Social Responsibility of Thai Business, as launched by the Ministry of Labor, specifically prohibits discrimination in employment on grounds of national origin, race, religion, language, age, sex, marital status, personal attitude on gender or sexual orientation, invalidity, HIV/AIDS status, trade union membership, employees' committee membership, political affiliation or other personal opinions.

**BENEFITS & PENSIONS**

**Statutory benefits**

**Workmen’s Compensation Fund**

Thailand has a worker’s compensation scheme which requires employers to pay medical expenses, rehabilitation expenses or funeral expenses incurred by employees due to injuries, sickness, rehabilitation, disappearance or death caused by accidents arising out of and in the course of employment. The current employer contribution rate (on yearly basis) is 0.2 to 1 percent of the total salary, payable to the employees subject to the types of business and as determined by the social security office, by January 31 of each year.
EMPLOYMENT

**Social Security Fund**

Every employer is required to register with the Social Security Fund. The government, employer and employee jointly contribute to the fund every time wages are paid. The rate of contribution is 5 percent of an employee’s salary, with a maximum of THB750 per month. As a member of the Social Security Fund, an employee is entitled to receive compensation benefits in non-work-related cases.

The Thai government issued Ministerial Regulations in order to decrease the rate of contribution from time to time as part of the financial assistance provided by the Thai government for businesses due to the coronavirus disease 2019 (COVID-19) outbreak.

**Voluntary benefits**

**Provident Fund**

An employer may alternatively and voluntarily establish a Provident Fund, which is used to provide security to an employee in the case of death, termination of employment or resignation from the fund. The employee may contribute a minimum of 2 percent to a maximum of 15 percent of their wages depending on the policy of the service provider, and the employer normally contributes no less than the employee’s contribution.

**DATA PRIVACY**

The Personal Data Protection Act B.E. 2562 (2019) (PDPA) was enacted on May 28, 2019 and has full effect from June 1, 2022. The PDPA is the first-ever law relating to personal data protection in Thailand. Essentially, consent is required for the collection, use and/or disclosure of personal data. Under the PDPA, the term “personal data” is defined as any data pertaining to a person that enables the identification of that person, whether directly or indirectly, but specifically excludes data of someone who is deceased.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

There is no automatic transfer of the employment relationship from one entity to another under the LPA. Employees are normally transferred in 2 ways:

- The transfer of employment from the transferor to the transferee with the employee’s clear written consent or with a tripartite agreement entered into between the transferor, transferee and the employee, stipulating that all rights and benefits enjoyed by the employee during their employment with the transferor will continue and the employee’s length of service with the transferor will be recognized by the transferee, or

- Full termination of the employee’s employment with the transferor and signing of a new employment agreement with the transferee.

In the latter case, the transferor is liable for providing the employee with statutory severance pay and other compensation as provided under the LPA and the employee’s employment contract. With the employee’s
employment fully terminated by the transferor, the transferee may offer the employee new employment with different terms and conditions, which may be less favorable than those offered by the transferor, and the employee’s service with the transferor will not be recognized.

Change of ownership of business through shares acquisition

A mere transfer of shares in the employing entity is not considered a transfer of business or employer as the employing entity remains the same.

EMPLOYEE REPRESENTATION

Employees representative in a welfare committee

Under the LPA, in a place of business with 50 employees or more, an employer must arrange for the establishment of a welfare committee comprising at least 5 employee representatives.

Employee committee

Under the LRA, in a workplace of 50 or more employees, the employees may establish an employees’ committee. The employer must organize a meeting with the employees’ committee at least once every 3 months or upon the request of more than 1/2 of the employees’ committee members or the labor union. The purpose of the meetings is to:

- Provide for employees’ welfare
- Consult about working regulations which may be beneficial to the employer and employees
- Consider any complaints by the employees and
- Compromise and settle disputes in the workplace.

Employees representatives

Under the LRA, any request by employers or by employees to make or amend a working conditions agreement must be made in writing to the other party. If employees submit the request, it must specify the names and signatures of the employees supporting it, which must be not less than 15 percent of the total number of employees who hold interest in such a demand. The employees have the right to elect representatives of no more than 7 people to participate in negotiations about working conditions.

Labor union

The LRA contains detailed provisions on the duties, formation and powers of labor unions. Certain rules and requirements must be satisfied by officials before a labor union may be recognized. The labor union may assist in requesting the creation or amendment of a working conditions agreement, settling disputes, acknowledging arbitral awards and employee strikes.

TERMINATION
Grounds

Whether an employer has reasonable grounds for termination is determined on a case-by-case basis. The following are grounds for termination of employment with cause under the LPA (ie, where the employer is not obliged to give advance notice or pay severance pay):

- Dishonesty or intentionally committing a criminal offense against the employer
- Willfully causing damage to the employer
- Being guilty of recklessness which causes serious damage to the employer
- Violating work rules or regulations or disobeying a fair and lawful order of the employer and in relation to which the employer has already given a written warning, except in serious cases where the employer does not need to give a warning. A written warning shall be effective for not more than 1 year from the date the employee committed an offense
- Abandoning duties without justifiable grounds for 3 consecutive working days regardless of whether or not there is a holiday in between and
- Being sentenced to imprisonment by a final court judgement, but, where the offense committed is due to recklessness or is a misdemeanor, the employer must have suffered damage as a result.

Employees subject to termination laws

All employees hired under a hire of services.

Restricted or prohibited terminations

An employer cannot dismiss, reduce the wages of, punish and/or withhold the performance of duty of any employee who is a member of the Employees’ Committee unless permission to do so has been given to the employer by the Labor Court. Further, an employer is not allowed to terminate or take any action which may result in an employee being unable to continue work due to the fact that such employee is a member of labor union.

Third-party approval for termination/termination documents

No third-party approval is required except for the termination of an employee who is a member of the employees’ committee, in which case approval from the Labor Court is required.

Mass layoff rules

Only apply in the case of termination of employment due to the introduction or replacement of machinery or application of technology. There is no numerical threshold to be reached before the rules apply.

Notice

For an employee who is party to an open-ended contract, either the employer or the employee may serve to the
other notice of termination on or before any salary payment date to take effect on the following salary payment date. However, it is not necessary to provide notice more than 3 months in advance.

An employer may terminate the contract of an employee immediately by making full payment of wages otherwise due for the notice period. Such wages must be paid to an employee on the date of dismissal.

Advance notice is not required if an employer terminates the employment with cause attributable to the employee as provided in the LPA.

For an employee employed under a definite-period contract, an employer does not need to provide prior notice in order to terminate such employment at the agreed time. However, if the employment is renewed or extended regularly, this may be deemed to be an open-ended contract and notice of termination will be required. Employees under a definite-period contract are also entitled to severance pay if their work does not fall within the exemptions given under the LPA.

Where a retirement age is not specified or the specified retirement age exceeds 60 years old, an employee who reaches 60 years of age may declare their intention to retire to an employer. Such intention becomes effective after 30 days from the date of the declaration. The retirement is deemed a termination of the employment, requiring the employer to pay severance pay to the retired employee, subject to years of services.

In the case of termination of the employee’s employment by the employer as a result of re-organization, improvement of the production process, distribution or service due to the introduction or replacement of machinery or application of technology which results in reduction of the number of employees, the employer must give 60 days’ notice of termination to the employee. A failure to give such notice will result in payment of special severance equal to the last 60 days’ wages in addition to the severance pay for employment termination.

**Statutory right to pay in lieu of notice or garden leave**

Only the employer has the right to make a payment in lieu of notice.

There is no concept of garden leave under Thai law. Employer and employees may agree on terms of a garden leave on a case-by-case basis. Nevertheless, such agreement must not take advantage of an employee. Otherwise, it shall be enforceable to the extent as it is fair and reasonable by the order of the Thai court.

**Severance**

LPA provides that an employer who terminates the employment of an employee without any cause attributable to the terminated employee as specified in the LPA is obliged to pay a severance payment to the employee at the rate prescribed by the LPA together with other due payments (eg, payment in lieu of advance notice and other accrued obligations, such as payment for unused annual leave or overtime payment).

An employee employed under a definite-period contract or a project contract whose employment is terminated according to such specified period is not entitled to any severance payment, provided that:

- Such employment is either a specific project which is not in the normal business or trade of the employer and has a definite start and end date, for work which is occasional with a definite ending or completion or for work which is seasonal
- The work is completed within a period not exceeding 2 years and
The employer enters a written contract with the employee at the beginning of the employment.

Rates of severance payment are as follows:

<table>
<thead>
<tr>
<th>Period of employment</th>
<th>Severance pay (wage equivalent)</th>
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<tbody>
<tr>
<td>120 days, but less than 1 year</td>
<td>30 days’ wages</td>
</tr>
<tr>
<td>1 year, but less than 3 years</td>
<td>90 days’ wages</td>
</tr>
<tr>
<td>3 years, but less than 6 years</td>
<td>180 days’ wages</td>
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<tr>
<td>6 years, but less than 10 years</td>
<td>240 days’ wages</td>
</tr>
<tr>
<td>10 years but less than 20 years</td>
<td>300 days’ wages</td>
</tr>
<tr>
<td>20 years or more</td>
<td>400 days’ wages</td>
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**Special severance pay**

If an employer terminates an employee due to the introduction or replacement of machinery or application of technology, and such employee has been working for 6 consecutive years or more, the employer shall pay additional special severance pay, in addition to the severance pay above, of not less than the last 15 days’ wage rate per year of employment capped at an amount equal to the last 360 days’ wage rate. For any period of less than a 1 year, if the fraction of employment period is more than 180 days, it will be rounded up to 1 full year of employment.

**POST-TERMINATION RESTRAINTS**

Those that protect the employer’s legitimate business interests may be enforced to the extent that they are reasonable and fair to the parties.

**Non-competes**

A non-competition agreement is permissible to the extent that it is reasonable and fair to the parties. Generally,
the restriction period of not more than 2 years within a restricted area, such as Thailand, is acceptable.

**Customer non-solicits**

A non-solicitation agreement is permissible to the extent that it is reasonable and fair to the parties. Generally, the restriction period of not more than 2 years within a restricted area, such as Thailand, is acceptable.

**Employee non-solicits**

A non-solicitation agreement is permissible to the extent that it is reasonable and fair to the parties. Generally, the restriction period of not more than 2 years within a restricted area, such as Thailand, is acceptable.

**WAIVERS**

According to the Civil and Commercial Code of Thailand, waiver in relation to statutory rights under the LPA and LRA will be void as those laws are related to public order and good moral. However, it is enforceable to waive contractual rights or rights under other laws, including a right to bring a claim against the employer for unfair dismissal.

**REMEDIES**

**Discrimination**

The employer violating discrimination provisions contained in the LPA is subjected to criminal penalty of a fine of not more than THB20,000.

**Unfair dismissal**

Unfair termination or unfair dismissal is where termination of employment is without cause or without reasonable or necessary cause. In the case of unfair dismissal, an employee may file a case against the employer claiming that their termination is unfair.

If the termination is considered an unfair dismissal, the Labor Court may order:

- Re-instatement, where the employee is re-employed to the same position
- Re-engagement, where the employee is re-employed to a position at least the same level as the one they previously held or
- Financial compensation.

**Failure to inform & consult**

No statutory requirement.

**CRIMINAL SANCTIONS**
The LPA and LRA both provide criminal sanctions including penalties of both fine and imprisonment. Further, in some instances, liability may be passed to the director of the employing company.

**KEY CONTACTS**

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TUNISIA

LEGAL SYSTEM, CURRENCY, LANGUAGE

Hybrid system of French civil law and Islamic Law, Tunisian Dinar (TND) and Arabic.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A company must have a presence in Tunisia (via a branch, a company or a subsidiary) to be able to hire employees.

Employers must withhold monthly social security contributions and pay them quarterly to the National Social Security Administration (CNSS). Employers must also withhold income tax contributions and pay them monthly to the government.

PRE-HIRE CHECKS

Required

Every company must require its employees to undergo a medical examination and, in particular, a medical examination relating to the employment. The results of the medical examinations belong to Occupational Medicine. It is obligatory for any company governed by the Labor Code to have an Occupational Medicine service in place, whatever its number of employees.

Permissible

Employers may ask employees to provide information relating to criminal records, subject to the prior consent of the employee. There are no legal requirements or restrictions on education checks or reference checks. In principle, the CV contains the necessary education and work-related information and the employer can request a copy of any diplomas or certificates of work or internship.

IMMIGRATION

Foreign nationals seeking to work in a paid position of any type in Tunisia are required to have a work permit as well as a residence card marked, "authorized to work in Tunisia."
There are 2 kinds of work permit:

1. A certificate of “non-submission to the work” - Attestations of non-submission for stamping of a work contract, issued by the Ministry of Employment
2. A work permit, issued by the Ministry of Employment.

HIRING OPTIONS

Employee

An employee is an individual who provides another person with personal services under the direction and control of that person. The Labor Code covers both permanent and seasonal/occasional work and both fixed and indefinite term contracts, as well as apprenticeship contracts. Both fixed-term and indefinite term contracts can be concluded for either full-time or part-time work. An apprenticeship contract is a contract for youths under the age of 20 to learn a trade from a master for a fixed duration.

Independent contractor

Self-employed persons are individuals who lack an employment contract, including agricultural workers, farmers, tenant farmers, independent fishers, artisans with a professional certification and drivers. Self-employed persons are subject to Tunisia’s social security regime and are responsible for paying the relevant social charges themselves.

Agency worker

The Tunisian Labor Code does not cover the concept of agency work but it does refer to sub-contracts which are defined as cases where a head of an industrial or commercial company enters into a contract for certain work or services with an entrepreneur who, in turn, recruits the labor necessary to perform the work.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

Generally, the law does not require an employment contract to be in writing insofar as it considers that the employment relationship can be evidenced by any means. However, part-time contracts and apprenticeship contracts must be made in writing.

Probationary periods

Probationary periods are allowed in respect of permanent contracts.

They are set by sectoral collective agreements and range from 3 months to one year depending on the professional category to which the employee belongs. They are renewable once for the same period if the employer considers that the probationary period is inconclusive.

Policies
Internal company regulations are not compulsory in Tunisian law, but are a useful document for organizing intra-company relations. The purpose of internal company regulations is to confirm the application to the company of health and safety regulations; to determine the general and permanent rules relating to disciplinary matters as well as the nature and scale of applicable sanctions; and to set out the procedures rules which apply to disciplinary sanctions. This document is, in principle, communicated to each new employee when they are hired and is subject of a provision in the employment contract.

The employer is required, in accordance with Article 85 of the Labor Code, to post schedules (working hours) at the premises of the company.

**Third-party approval**

The document which sets out working hours must be previously sent to, and endorsed by, the labor inspectorate with territorial jurisdiction.

**LANGUAGE REQUIREMENTS**

Contracts can be written in the desired language however, only Arabic and French are accepted by the public authorities (Arabic being the official language).

**MINIMUM EMPLOYMENT RIGHTS**

**Employees entitled to minimum employment rights**

All employees are covered by the rules on working time and minimum wage.

**Working hours**

Tunisian labor law contains provisions for maximum weekly working hours (regime of 40 or 48 hours per week) and special circumstances that permit derogation from these provisions. In general, a regular work regime cannot exceed 48 hours in a week, or an equivalent number of hours established for a period of time other than a week as long as the duration of that period is no longer than a year. In agricultural work, hours are limited to 2,700 hours over 300 effective working days.

**Overtime**

Employees are allowed to work overtime, but overtime and make-up hours cannot cause the working week to exceed 60 hours except when there is urgent work needed to prevent imminent accidents or to organize lifesaving measures.

**Wages**

Minimum wages are set by decree on a sector by sector basis.

**Vacation**

In the non-agricultural sector, and for sectors not covered by a sectoral collective agreement, all workers who
have worked for the same employer for a period equivalent to at least one month, and are engaged in effective work, have the right to one day per month of vacation up to a period of 15 days, comprising 12 business days. This allowance is doubled for a worker under 18 years old, regardless of length of service. Workers between the ages of 18 and 20 are entitled to 1.5 days per month of vacation up to a maximum of 22 days comprising 18 business days, regardless of length of service. The monthly leave allocation is increased by one day for those who have worked at the same company for at least five years, as long as the leave does not exceed a total of 18 days. Workers are normally granted annual leave between June 1 and October 31 of each year. All workers are covered by the annual leave provisions, though the manner in which annual leave is granted differs by age and by sector. Paid annual leave cannot be contracted out of by agreement, even if it comes with compensatory payment.

Sick leave & pay

Sickness suspends the labor contract but does not constitute cause for terminating the contract unless it is sufficiently serious, prolonged and if the needs of the company require it to replace the sick employee. Sick days cannot be deducted from annual leave. There are no restrictions on the number of days’ sick leave that an employee can take. Sick pay is typically at two-thirds of the employee’s daily rate, covered by the employer for the first 5 days of illness and paid by the social security fund from the 6th day.

Maternity/parental leave & pay

Women are entitled to 30 days of paid maternity leave in the private sector. Men are currently only entitled to 2 days of paternity leave in the private sector. Maternity leave is not required to be paid to the employee by the employer. It is supported by social security.

DISCRIMINATION

Article 5bis of the Labor Code prohibits discrimination between men and women in the application of the Code. In 2017, Tunisia also passed a law countering violence against women that includes economic discrimination in the form of violence against women. Tunisia is also a party to the UN Convention on the Elimination of All Forms of Discrimination Against Women as well as its optional protocol.

Tunisia has laws that forbid employment discrimination on the basis of disability, provided that the disabled person is qualified for the job and provided that the job does not require specific physical abilities. There are also quotas for hiring disabled persons in the public sector and in large companies. Tunisia is also a party to the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol.

Most recently, Tunisia adopted a law countering all forms of racial discrimination.

BENEFITS & PENSIONS

Pension regimes in Tunisia are almost exclusively administered through the state pension system, the National Social Security Administration (CNSS) in the private sector and the National Pension and Social Insurance Fund in the public sector. The pension system is a pay-as-you-go system and, in general, the retirement age is 62. The state retirement scheme provides a pension to the employee and a survivor’s pension to the employee’s spouse upon the employee’s death.
DATA PRIVACY

Under Tunisian law, all people have the right to the protection of personal data related to their private life and this applies to both automated and non-automated treatment of data. Personal data is defined as information that directly or indirectly permits the identification of a physical person, except for data linked to public life or defined as such under the law. In general, any organization planning to use personal data must make a declaration of the data to be used to the National Authority for the Protection of Personal Data, though there are exceptions for employers using employee data. In addition, express written consent from the data subject is required in most cases.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

The Labor Code states that the labor contract remains in place between the worker and the employer if the legal status of the employer changes. In other cases, the transfer of an employee from one company to another would require an agreement between all three parties.

EMPLOYEE REPRESENTATION

All companies with at least 20 permanent personnel are required to have a staff representation organization.

TERMINATION

Grounds

Employers cannot terminate the employment of an employee in the absence of serious fault on the part of the employee and an employer intending to dismiss a worker must indicate the cause of the dismissal in a letter addressed to the employee. Dismissing without a real and serious cause justifying it or without respect for legal, regulatory or convention procedures is considered abusive termination of employment.

Employees subject to termination laws

Any employee with a labor contract is subject to termination laws.

Restricted or prohibited terminations

Dismissal without the existence of a real and serious cause justifying it or without compliance with legal, regulatory, or conventional procedures is considered abusive (e.g., dismissals without serious cause of employee representatives, employees who are incapacitated, pregnant women or employees on parental leave).

Third-party approval for termination/termination documents

Cases in which a third party must be consulted in relation to the termination of employment are when an employer seeks to terminate a member of the Consultative Commission or a unionized employee, or make an economic dismissal. The Consultative Commission is the staff representative body, made up equally of representatives of management and elected workers. An employer who intends to dismiss a union member or a personnel representative must apply for the opinion of the labor inspectorate. An employer who intends to make
a dismissal for economic reasons must obtain the approval of the competent authority (see also “Mass Layoff Rules”).

For an indefinite term contract, the employer must provide written notification of termination.

Mass layoff rules

An employer intending to lay off an employee for economic or technical reasons as part of a mass layoff is required to notify the Labor Inspectorate of the reasons, and justifications, for the layoff. The Labor Inspectorate must then investigate and submit a dossier within 15 days to the Regional Commission of Control of Layoffs or to the Central Commission of Control of Layoffs, both of which contain representatives from the employer’s union and the employee’s union and are presided over by an official from the Labor Inspectorate. The Commission must then give its opinion within 15 days and can reject the employer’s plan or propose alternative courses of action such as employee retraining.

Notice

For indefinite/fixed term contracts, employees are entitled to a notice period. Its duration depends on what is provided by the relevant CBA. Each company is subject to its relevant CBA and, in the absence of a specific agreement, the framework CBA applies.

Statutory right to pay in lieu of notice or garden leave

There is no legal provision under which employers can make a payment in lieu of notice. Garden leave as a concept does not exist in Tunisia. However, there is a provision in Tunisian labor law under which laid off employees do not have to work for the last half month of their employment so that they have time to search for a job.

Severance

After the expiration of the trial period, severance is due to all employees if they were terminated without fault. The severance payment is calculated according to what is provided in the relevant CBA.

POST-TERMINATION RESTRAINTS

The following restrictions are allowed:

Non-competition; non-dealing; non-solicitation of clients; non-solicitation of employees; non-employment of employees; protection of confidential information during / post-employment.

The law does not regulate the duration of restraints except for non-competition clauses in certain sectors (electricity and electronics) which is limited to 2 years and within a radius of 100 km from the head office etc. In practice, it is generally applied for a period of 2 years. However, it is important that these restrictions are reasonable and justified.
Non-competes
Permissible.

Customer non-solicits
Permissible.

Employee non-solicits
Permissible.

WAIVERS

The legal framework surrounding settlement agreements and waivers of rights in Tunisia is not well-developed. The Labor Code specifies that any agreement under which an employee purports to renounce his/her rights to leave is not valid even if compensated in return.

In addition, the Code of Obligations and Contracts states further that any renunciation of a right must be strictly construed and are confined to the scope that was plainly intended by the individual. Ambiguous acts cannot be taken as an indication of the renunciation of a right.

Finally, any agreement that is contrary to the law concerning reparation of harms resulting from work accidents and work-related illnesses is void. This includes any renunciation of rights on the part of beneficiaries.

REMEDIES

Discrimination

Employers can be fined TND 24 to 60 for discriminating on grounds of sex and fines are doubled for repeat offenses.

Unfair dismissal

Employees terminated for an abusive reason can sue for damages in the Labor Court (Conseil de Prud’hommes). In addition to the notice period, the end of service severance and any other outstanding allowances, employees can claim damages which vary from one month’s salary to two month’s salary for every month the employee has worked at the company up to the equivalent of three years’ salary. Employees who were terminated for a serious reason, but where the termination did not follow proper procedure, can receive damages also, between one and four months’ salary. Damages in a fixed-term contract are fixed to a salary amount equal to the remaining duration of the contract.

Failure to inform & consult

The Consultative Commission does not have co-determination rights as the employer can choose not to take its advice. A failure to inform and consult the Commission in appropriate circumstances would deem a dismissal to be abusive for non-compliance with legal and contractual procedures.
CRIMINAL SANCTIONS

Most employment offenses in Tunisia lead only to fines at the low rate of TND 24 - 60. However, some specific offenses can result in imprisonment including:

- Intentional interference with the free selection of members of the Consultative Commission or with the selection of workers’ delegates.

- Repeat offenses regarding the formation of unions.

- Foreign workers working illegally who continue to work after being ordered to stop.

- Offenses concerning dangerous or unhealthy work environments.

- Interference with those who inspect establishments for compliance with health and safety provisions.

- Illegal strikes or lockouts.

- Failure to comply with requisition measures.

KEY CONTACTS
TURKEY

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. The official currency is the Turkish lira (TRY). The official language is Turkish.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign company without local corporate registration cannot directly engage employees in Turkey. When a foreign entity engages in commercial activities in Turkey, these activities should be performed through a branch office or a company. The employees should be registered under the payroll of the branch office or the company. If a foreign entity only engages in market research in Turkey and not in any commercial activity, the activities may be performed through a liaison office. The employees should be registered under the payroll of the liaison office.

All employers should register the employees with the Social Security Institution as of their first day of employment and make the statutory contributions.

PRE-HIRE CHECKS

Required

None.

Permissible

Pre-hire checks (eg, criminal and credit reference or reference and education checks) are only permissible with the applicant’s consent. Depending on the position of the employee, pre-hire checks are common.

IMMIGRATION

Foreign employees can work in Turkey once they obtain work and residence permits. Within 30 days after obtaining a work permit (as the work permit applications are made by the employer, this date also corresponds to
the start date of the work), such expats (who are registered under the social security of a foreign country) must be registered by the employer under the social security system of Turkey, subject to bilateral social security treaties executed with the relevant foreign countries.

**HIRING OPTIONS**

**Employee**

Definite period, indefinite period, full-time, part-time, for a maximum or minimum term, seasonal, temporary or on call. All employees have the right not to be discriminated due to their status.

**Independent contractor**

Independent contractors may be engaged directly by the company.

**Agency worker**

Companies may outsource agency workers for certain positions stipulated under Turkish legislation. Establishment of a subcontractor relationship for (i) auxiliary works for production of goods and services or (ii) divisible parts of main work which require expertise due to technological reasons or features of the workplace and business is permissible under Turkish law. If the conditions for establishment of a subcontractor relationship are not met, the relationship is likely to be deemed "collusive payroll subcontracting," which, while sometimes used in practice, is not permissible, and is subject to an administrative fine. In addition, the employees lent from the agency would be regarded as employees of the hiring company.

**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

In principle, it is not mandatory to execute an employment contract, but it is common practice to do so. In cases where there is no written employment contract, within 2 months of the commencement of employment, the employer must provide the employee with a written document bearing the employer’s signature and stating the general and special conditions of employment. However, the following types of employment contracts must be executed in writing in order to be valid and binding:

- Definite-term employment contracts that will remain in effect for at least 1 year
- Employment contracts with a probationary period (maximum of 2 months)
- Employment contracts with a non-compete undertaking
- Employment contracts signed with foreign individuals
- Employment contracts for on-call work
- Employment contracts for teleworking
• Team employment contracts (concluded between an employer and an employee, who represents a team of various employees)

• Temporary employment contracts

Probationary periods

According to Turkish Labor Law, the parties may agree on a probationary period of up to 2 months, which can be extended to up to 4 months through collective bargaining agreements. The parties may terminate the employment contract within the probationary period without prior notice, and no compensation liability arises.

Policies

No mandatory policies.

Third-party approval

No requirement to lodge employment contract or policies with or get an approval from any third party.

LANGUAGE REQUIREMENTS

Employment contracts must be in Turkish if they are executed by and between employees who are Turkish citizens and businesses incorporated under Turkish law. However, employment contracts may be drafted in a dual-column format in Turkish and any other language, but the Turkish version is the prevailing language.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All.

Working hours

There is a limit of 45 hours a week on working time, and working time cannot exceed 11 hours daily.

Overtime

Overtime work is any work performed beyond 45 hours in a week (or the shorter duration as designated under the relevant employment contract). Employee consent is required for overtime work. Employers are required to obtain employees’ written consent to work overtime either in the employment contract or whenever it is necessary. Employees have the right to withdraw such consent by providing 30 days’ prior written notice to the employer.

Wages

Minimum monthly gross wage is TRY5,004 for 2022.

Vacation
14 days’ paid leave for 1 to 5 years (including 5th year) of employment; 20 days’ paid leave for more than 5 but
less than 15 years of employment; 26 days’ paid leave for 15 years of employment and more (including 15th year).
For employees below the age of 18 and above 50, the length of annual paid leave with pay shall not be less than 20
days. These periods are the minimum and may be increased by the mutual agreement of the parties. Unused
annual leave days must be paid to the employee upon termination if claimed within the 5 years’ statute of
limitations after termination.

Sick leave & pay

If an employee is medically certified as being unable to work, the employer is obliged to pay the employee wages
for the first 2 days of absence. From the third day of absence, under the Social Security and General Health
Insurance Law, temporary disability allowance (ie, sickness allowance) shall be paid for each day of temporary
incapacity to insured persons who have paid sickness insurance contributions for a certain time determined under
this law. The temporary disability allowance paid by the Social Security Institution may be deducted from the wage
paid to a salaried employee on a monthly basis. If an employee is absent from work owing to illness or injury for
more than a certain period between 8 and 14 weeks, the employer is entitled to terminate the employee’s
contract without notice.

Maternity/parental leave & pay

As a rule, an employee receives a disability allowance for this maternity leave period from the Social Security
Institution (SSI), which will be calculated as 2/3 of the employee’s income notified to SSI. In practice, employers
continue to pay employees’ salary during the maternity leave at their own discretion and recoup the disability
allowance paid by SSI to the employee. However, this is not mandatory, and employers are not obligated to pay
employees’ salary during the maternity leave period.

Employees have the right to work part time – that is, up to 2/3 of the total weekly working time – following
completion of statutory maternity leave. An employee wishing to work part time may make such a request at any
time from the end of the statutory maternity leave until the child’s compulsory elementary education age. The
request for part-time work may be made either by the mother or father, but such leave may be used by only 1 of
them.

On the request of a female employee, an employer must give unpaid leave of up to half the weekly working time
following the end of statutory maternity leave for 60 days for the first birth, 120 for the second birth and 180 for
the third birth.

A male employee whose spouse has given birth is entitled to 5 days of paid leave.

DISCRIMINATION

No discrimination based on language, race, color, sex, disability, political opinion, philosophical opinion, religion or
similar reasons, union membership or non-membership, or maternity is permissible. Furthermore, the employer
cannot treat part-time and full-time employees differently unless the difference in treatment can be objectively
justified by there being a material reason.

BENEFITS & PENSIONS
With the amendments in the Private Pension Savings and Investments System Law No. 4632, it became compulsory for employers to include employees under 45 years in a private pension plan.

Under the system, if the employer employs 5 or more employees, it must execute a private pension plan agreement with 1 or more pension companies. It must enroll its employees who are under the age of 45 in the relevant pension plan(s). The employer must deduct the contribution fee (i.e., 3 percent of the gross salary of the employee) from the monthly salaries and deposit such fees with the pension companies.

**DATA PRIVACY**

Employees must be notified of personal data processing, and their prior written consent should be obtained (unless exceptions stipulated under the relevant legislation are present) for such processing and transfer of their personal data. Personal data should be processed:

- In accordance with the law
- In good faith
- For definite, clear and legitimate purposes
- In a relevant and measured manner

Data controllers (i.e., individuals or legal entities that determine the purposes and means of processing personal data – for example, employers) are required to be registered with the Data Controllers Registry provided that they meet certain criteria.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

There are several provisions under separate laws governing transfer of employees from 1 employer to another:

- Turkish Code of Obligations No. 6098 (TCO)
- Labor Law
- Turkish Commercial Code No. 6102 (TCC)

The provisions under the TCO govern transfer of employment contracts from a company to another in a broader sense, while the Labor Law specifically governs transfer of workplace and the TCC specifically governs transfer of employment contracts in corporate transactions.

The application of the above laws may differ depending on the nature of the transaction: whether the employees will be transferred through a spinoff or by way of a business transfer.

**In the event of a spin-off transaction**

If the employees are to be transferred to another entity within the context of a spinoff transaction to take place in
Turkey, the provisions under the TCC will be applicable. According to Article 178 of the TCC, the employees will be transferred to the transferee with all rights and obligations unless the employees object to such transfer. In this regard, the TCC provides "a right of objection" to the employees.

Turkish law does not stipulate any specific requirement as to when and how a notification must be made to the employees. However, it is naturally advisable for the transferor to notify the employees in writing regarding the contemplated transfer before the spinoff is affected. Upon such notification, if the employees do not object to the transfer of their employment contracts, the transferee becomes their new employer once the spinoff transaction is effective.

If the employees are going to be transferred with exactly the same terms and conditions – that is, no special benefit will be provided to employees of different seniority or position – a template letter addressed to each employee will suffice.

If an employee objects to the transfer, their employment contract will be deemed terminated following completion of their notice period. In this event, the employee will be paid their outstanding salary and other labor entitlements (e.g., annual leave entitlements, premiums or bonuses). The TCC remains silent on whether or not the employees become entitled to receive severance pay in the event of such termination. However, certain scholars opine that, in the event of such termination, the employees become entitled to receive severance pay. Importantly, as per the 3rd paragraph of Article 178, both the transferor and the transferee are jointly liable for payment of the employees' such entitlements, including severance pay.

In the event of a business transfer transaction

If the employees are to be transferred to the transferee within the context of a business transfer transaction to take place in Turkey, the provisions under the Labor Law and the TCO will be applicable.

According to the TCO, if the employment contracts will be transferred from 1 employer to another, the employees' prior written consent must be obtained. However, the TCO remains silent on what would happen if the employee were to not consent to the transfer. As modern Turkish labor law's main concern is protecting employees' benefits, it suggests permanence in employment relations. In line with this concern, contrary to what the TCC provides, Article 6 of the Labor Law states that the transfer itself does not constitute a just cause or valid reason for termination of the employment contracts on its own, and, if the employer intends to terminate the employee's contract, it must base the termination on economic or technological reasons or an organizational restructuring.

Contrary to what the TCC provides, Article 6 of the Labor Law should be taken into consideration.

EMPLOYEE REPRESENTATION

A trade union representing at least 1 percent of the employees who are engaged in a given branch of activity and more than half of the employees employed in the workplace of a company or, if there is more than 1 workplace, 40 percent of the employees employed in all workplaces of the company at the enterprise level shall have the power to conclude a collective bargaining agreement covering the workplace or workplaces in question.

Apart from the union's workplace representatives, work councils or employee committees are not regulated under the Law on Unions and Collective Bargaining Agreement. The union's workplace representatives are
appointed by the union, which is authorized to execute a collective bargaining agreement and appointed from among the employees working in the workplace who are members of such union. If there are up to 50 employees, 1 representative may be appointed; 51 to up to 100 employees, at most 2 representatives; 101 to up to 500 employees, at most 3 representatives; 500 to up to 1,000 employees, at most 4 representatives; 1,001 to 2,000 employees, at most 6 representatives; and more than 2,000 employees, at most 8 representatives.

TERMINATION

Grounds

Requirements for termination of an employment contract vary depending on whether such contract is for an indefinite or definite term.

Employment contracts for a definite period terminate automatically with the expiration of the period or with a just cause stipulated under the Labor Law or based on mutual consent. Employers may terminate an indefinite employment contract for valid or just cause or based on mutual consent.

Terminations based on just cause

Under the Labor Law, just causes that may lead to immediate termination (ie, without the employer giving notice as prescribed by the Labor Law) are classified under 4 categories:

- Long-term absence due to health reasons
- Immoral, malicious and dishonorable employee conduct
- Force majeure
- Absence due to detention or arrest

When an employment contract is terminated with just cause, the benefits and rights of the employee arising from the employment contract (eg, an amount equivalent to the accrued but unused annual paid leave days and any payment arising from workplace practice) as well as the employee’s statutory entitlements under Labor Law are payable. No notice is due, but severance may need to be paid unless the employment was terminated on the grounds of immoral, dishonorable or malicious conduct or similar behavior.

Terminations based on valid cause

Under the Labor Law, if an employee who has an indefinite-term employment contract is employed in a company with 30 or more employees and has a minimum seniority of 6 months, the job security provisions of the Labor Law apply, and therefore the termination must be based on a valid cause.

A termination based on valid cause triggers notice and severance payments. Such valid cause could relate to efficiency or behavior of an employee or requirements of the enterprise, workplace or work.

For companies with fewer than 30 employees, the valid cause requirement does not kick in, and employment may be terminated for any reason, but notice and severance pay are still required.
Termination based on mutual consent

Whether the employment contract has a definite duration or not, it may be terminated with the mutual consent of the parties by executing a settlement agreement.

Employees subject to termination laws

Employees in companies with fewer than 30 employees and/or employees who have less than 6 months’ employment in a company are not entitled to job security. The employer’s representatives who act on behalf of the employer and participate in the management of the work, workplace and business and their deputies are also not entitled to job security.

Restricted or prohibited terminations

The employment contract cannot be terminated for the following reasons: participation in union activities; filing of a complaint against the employer involving alleged violations of laws; race, color, sex, marital status, family responsibilities, pregnancy confinement, religion, political opinion and similar reasons; absence from work during maternity leave when female employees must not engage in work; or temporary absence from work during the waiting period due to illness or accident foreseen in the relevant article of the Labor Law.

Third-party approval for termination/termination documents

Not required.

Mass layoff rules

Collective redundancy occurs when, in establishments employing between 20 and 100 employees, a minimum of 10 employees are dismissed on the same date or in a 1-month period; in establishments employing between 101 and 300 employees, a minimum of 10 percent of employees are dismissed on the same date or in a 1-month period; and, in establishments employing 301 and more employees, a minimum of 30 employees are dismissed on the same date or in a 1-month period due to economical, technological, structural or similar reasons in business, work and the workplace with written notice at least 30 days prior to the union’s workplace representative, relevant regional directorate and Turkish Employment Agency.

Notice

Less than 6 months of employment: 2 weeks; 6 months to 1.5 years of employment: 4 weeks; 1.5 years to 3 years of employment: 6 weeks; more than 3 years of employment: 8 weeks. These periods are the minimum periods and may be increased by the mutual agreement of the parties. However, such change must be applicable for both parties and should be reasonable.

No need to comply with the notice in case of termination based on just cause determined under the Labor Law.

Statutory right to pay in lieu of notice or garden leave

Payment in lieu of notice is permissible. A company is entitled to pay wages corresponding to the term of notice (i.e., notice pay).
There is no set garden leave concept under Turkish law. However, it may be agreed upon in the employment contract.

**Severance**

An employee is only entitled to severance if they have completed 1 year of service for the employer.

Severance payments must be paid if the employer terminates the employment contract with notice based on an objective, valid cause relating to the efficiency or behavior of an employee, or business requirements (i.e., redundancy). In principle, an employee is entitled to severance payment upon termination of employment without notice based on a just cause specified under the Labor Law, unless the termination is based on immoral, dishonorable or malicious conduct or similar behavior. An employee is also not entitled to a severance payment upon voluntary resignation except for cases where the employee resigns due to retirement, marriage (only for female employees) or military service. If the employment contract is terminated by the employee on just cause, they are entitled to severance payment.

For each complete year of work – and pro rata for any incomplete year – the employee must be paid an amount equal to their monthly salary. The Labor Law provides an upper limit for severance pay. Regardless of the amount of an employee’s last month’s salary, the upper limit of severance pay for each year of work is capped at TRY10,848.59 for the first half of 2022 – the amount is indexed twice a year. Accordingly, even if the employee’s salary for their last month is higher than the mandatory upper limit, the employer is only required to pay the severance pay to be calculated as per the upper limit.

**POST-TERMINATION RESTRAINTS**

Written form is a condition for the validity of a non-compete agreement. Non-competes are valid only if the employee is employed in a position whereby they have the opportunity to acquire valuable knowledge or trade secrets and the use of such information may harm the employer.

**Non-competes**

Non-compete undertakings:

- Must be limited to a certain period of time (i.e., maximum 2 years)
- Must be effective within a specified territory
- Must be in relation to a specific business field

Limitation is not regulated under the law and must be determined according to the particular case. However, based on Court of Appeal decisions, it is not possible to stipulate the non-compete territory as "all over the world" or "Turkey as a whole."

For example, "within the provinces in Turkey that the company operates" is a valid territory for a non-compete obligation.
Customer non-solicits
Permissible.

Employee non-solicits
Permissible.

WAIVERS

A release deed is valid provided that it is executed in written form after at least 1 month has passed since the termination of the employment contract.

REMEDIES

Discrimination

Compensation of up to 4 months’ wages plus other claims, such as unpaid wages, bonuses or other social allowances of which the employee has been deprived due to discriminatory acts of an employer.

Unfair dismissal

If the employee benefits from job security provisions and the court re-instates the employee back to work, provided the employer re-instates the employee in accordance with the court's decision, the employer shall make payment of up to 4 months of the employee’s total wages and other entitlements. If the employer does not re-instate the employee within 1 month, it shall:

- Make payment of up to 4 months of the employee’s total wages and other entitlements
- Pay re-instatement compensation of not less than 4 months of the employee’s wages and not more than 8 months’ wages

In the calculation of the re-instatement compensation, only the basic wage of the employee shall be taken into consideration.

Failure to inform & consult

Subject to administrative fines.

CRIMINAL SANCTIONS

Criminal sanctions are not generally a concern, except in cases such as sexual harassment or an occupational accident.
KEY CONTACTS

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UGANDA

LEGAL SYSTEM, CURRENCY, LANGUAGE

Common law. Member of the African Union (AU), so required to implement relevant AU directives. The official currency is the Uganda Shilling (UGX). The official language is English.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity must have a local corporate presence in Uganda before engaging employees. The entity will be required to register for tax and social security where it employs 5 or more employees. Up to 4 employees may be engaged without social security registration. There is, however, an option of voluntary registration. The employees would still be required to register for tax. Employee earnings are subject to pay-as-you-earn (PAYE) tax of up to 30 percent of the earnings and social security contributions of 15 percent, 10 percent being the employer’s contribution and 5 percent being the employee’s contribution.

PRE-HIRE CHECKS

Required

Immigration compliance for all non-nationals.

Permissible

Criminal and credit reference checks are permissible. Reference and education checks and medical examinations are common and permissible.

IMMIGRATION

Immigration is highly regulated in Uganda. Expatriate employees may work in Uganda with a work permit; applicants seeking short-term work authorization must apply for the 6-month work permit.

Work permits are issued for long-term work authorization lasting for a minimum of 6 months and maximum of 36 months. In principle, an employer is required to demonstrate that there is no skilled employee locally available for
the position, and that the foreign employee will train a Ugandan national to take over their position on completion of the assignment. However, for high-level positions, the immigration department grants work permits without a labor testing requirement.

All applications for immigration facilities are now lodged online. For work permits, the sponsoring employer is required to register with the Directorate of Immigration and receive a unique numbered code which grants access to the e-immigration portal.

Nationals of the East African Community (EAC) are exempt from paying fees for work permits. However, EAC nationals are required to apply for work permits and undergo the evaluation process, and their work permit applications may be approved or rejected.

**HIRING OPTIONS**

**Employee**

Indefinite, fixed-term, full-time or part-time employees have the right not to be discriminated against. Substantial level of control over the individual, provision of tools of trade and training and an individual's work being an integral part of the business indicate that an individual is an employee. Casual employees may only be engaged for up to 4 months.

**Independent contractor**

Independent contractors may be engaged directly by the company or via a personnel services company. Engagement may be subject to misclassification exposure. Payments for independent contractors are subject to a 6-percent withholding tax. However, a foreign company engaging an independent contractor has no obligation to withhold tax. The independent contractor is, however, required to pay the tax.

**Agency worker**

Agency workers are common. The agency is required to have a valid recruitment permit.

**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

Written employment agreements are common but not mandatory. Within 12 weeks of commencement of employment, employees must be provided with certain minimum terms in writing. The Employment Act requires that an employee is provided the following written particulars of employment within 12 weeks of commencement:

- Full name and address of the parties to the contract of service
- The date on which the employment under the contract began, specifying the date from which the employee’s period of continuous service, for the purposes of the Employment Act, shall commence
- The title of the job that the employee is employed to do
• The place where the employee’s duties are to be performed

• The wages the employee is entitled to receive, the intervals at which they will be paid and the deductions or other conditions to which they shall be subject

• The rate of overtime pay applicable to the employee

• The employee’s normal hours of work and the shifts or days of the week on which such work is to be performed

• The number of days of annual leave to which the employee is entitled

• The terms or conditions relating to incapacity for work due to sickness or injury, including any provision for sick pay and

• The length of notice in excess of that provided by the Act required for lawful termination of the contract by the employer or employee.

Probationary periods

Permissible. Statutory limit of 6 months, which may be extended for a further 6 months with the consent of the employee. 3 to 6 months’ duration is common.

Policies

A written occupational health and safety policy where the employer has at least 20 workers at a workplace, a sexual harassment policy where the employer has more than 25 employees, and a disciplinary and grievance policy are mandatory. The disciplinary and grievance policy is mandatory for all employers, but form and content may vary according to the size and nature of the organization.

The policies may be referenced in the contract of employment.

Third-party approval

No requirement to lodge employment contracts or policies with, or get approval from, any third party.

LANGUAGE REQUIREMENTS

No statutory requirements. It is common for agreements to be in English. Where the employee does not understand the language in which the agreement is drafted, the agreement must be attested to. A magistrate or labor officer draws up a written document ascertaining that the employee has freely consented to the contract and that their consent has not been obtained by coercion, undue influence, misrepresentation or mistake; that the contract complies with the Employment Act; and that the labor officer is satisfied that the employee has duly understood the terms of the contract before giving their final agreement to it.
Employees entitled to minimum employment rights

All.

Working hours

A limit of 48 hours a week. An employer may agree with an employee to work in excess of 48 hours, but work should not exceed 10 hours per day or 56 hours per week, except for shift workers, for whom it is permissible that the average number of hours over a period of 3 weeks does not exceed 10 hours per day or 56 hours per week.

Overtime

In the absence of a written agreement, there is a statutory overtime rate of 1.5 times the normal hourly rate if overtime is on normal working days, and 2 times the hourly rate where overtime is worked on gazetted public holidays.

Wages

The 1984 Minimum wage of UGX6,000 is still in force as the Minimum Wages Act of 2019 did not receive presidential assent.

Vacation

Employees are entitled to a minimum of 21 days’ annual leave every calendar year. There are also 14 gazetted public holidays. These are:

- New Year's Day: January 1
- NRM Victory Day: January 26
- Bishop Janan Luwum Day: February 26
- International Women's Day: March 8
- Good Friday: determined yearly
- Easter Monday: determined yearly
- Labor Day: May 1
- Eid al Adha: determined yearly
- Martyrs’ Day: June 3
- National Heroes Day: June 9
- Eid al-Fitr: determined yearly
Independence Day: October 9
Christmas Day: December 25
Boxing Day: December 26

Sick leave & pay

Statutory sick leave and pay provisions allow for employees who have been in employment with the employer for at least 1 month up to 2 months sick leave, with the employee entitled to full wages in the first month only. The employer may terminate the employment agreement on account of illness only after an absence of 2 consecutive months.

Maternity/parental leave & pay

60 working days of fully paid maternity leave, of which at least 4 weeks shall follow childbirth or miscarriage. The employer funds the paid maternity leave. Male employees are entitled to a paternity leave of 4 working days, fully funded by the employer.

There is no legal provision for adoption or surrogacy leave, carer leave emergency or ad-hoc family-related leave.

A female employee’s pregnancy or any reasons connected to her pregnancy and the fact that an employee took or proposed to take leave to which they are entitled under contract or law would constitute unfair reasons for dismissal.

DISCRIMINATION

Statutory protection against unlawful discrimination based on race, color, sex, religion, political opinion, national or social origin, HIV status or disability.

An employer shall pay male and female employees equal remuneration for work of equal value.

BENEFITS & PENSIONS

Currently, no benefits required above those covered under social security contributions.

DATA PRIVACY

The Data Protection and Privacy Act, 2019 was passed into law to supplement constitutional privacy protections under Article 27 of the Constitution of the Republic of Uganda. The Act regulates personal data collection, processing, use and disclosure, and applies to any person, entity or public body within or outside of Uganda who collects, processes, holds or uses personal data.

The Act requires an employer to obtain informed consent prior to collecting or processing an employee’s personal data. The Act permits processing or storage of personal data outside Uganda if adequate measures are in place in the country in which the data is processed or stored, at least equivalent to protections under the Act, or
with the data subject’s consent.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Automatic transfer under the Employment Act and additional regulations on a transfer of business. Significant restrictions on changing terms and conditions following a transfer. Period of continuous service is preserved. Where only employees are being transferred or the employer is being changed, there is a duty to obtain the consent of employees and consult with employee representatives, if any.

If an employee transfers from one employer to another without necessarily transferring the business, in the absence of a written agreement between the new employer and the employee, terminal benefits must be paid within 2 months of the transfer. These include accrued but untaken leave and/or overtime, certificate of service and any other contractual benefits under the employee’s old terms of employment.

Any dismissal connected to the transfer would be unfair unless for an economic, technical or organizational reason.

EMPLOYEE REPRESENTATION

Labor unions are prevalent in certain sectors (e.g., manufacturing, transport and the public sector). Many businesses have no union or other worker representation. Works councils are uncommon. Industry-level collective bargaining agreements are uncommon.

TERMINATION

Grounds

Dismissal and termination are distinguishable under the Employment Act. Termination is permissible for justifiable reasons other than misconduct or poor performance, such as reaching the retirement age, expiry of contract, death, medical incapacity or redundancy.

Dismissal is permissible for verifiable acts of misconduct or poor performance. A fair process must be followed. Fair process includes substantive and procedural fairness. In other words, the employer must have reasons for dismissal, and due process must be followed before the dismissal is effective.

Employees subject to termination laws

All employees, except that employees on probation have no unfair dismissal protection.

Restricted or prohibited terminations

No statutory prohibitions.

Third-party approval for termination/termination documents

Not required.
Mass layoff rules

Strict information and consultation rules apply where 10 or more employees are to be made redundant over 90 days or less. The employer must also notify the Commissioner for Labor of such redundancies; failure to do so is a criminal offense.

Notice

14 days' notice for employees on probation. No less than 2 weeks where the employee has been employed for over 6 months but less than a year. 1 month where employee has been employed for more than 1 year but less than 5 years, 2 months where employee has been employed for more than 5 years but less than 10 years and 3 months where employee has been employed for over 10 years. Not required for summary dismissals for gross (ie, extremely serious) misconduct. Longer notice may be agreed and set out in the contract of employment.

Statutory right to pay in lieu of notice or garden leave

Statutory right to pay in lieu of notice. Garden leave depends on contract terms.

Severance

Payable in the following circumstances to employees who have completed 6 months continuous service:

- Unfair dismissal from employment
- Death in service other than from the employee's own serious and willful misconduct
- Employee's termination of contract on account of physical incapacity not occasioned by their own serious and willful misconduct
- Termination by reason of death or insolvency of the employer
- Termination by a labor officer following the inability or refusal of the employer to pay wages or
- Such other circumstances as the Minister may, by regulations, provide.

The rate of severance pay is negotiable. Where no prior negotiations have been made, the courts have set severance pay at 1 month's salary for every year worked.

POST-TERMINATION RESTRAINTS

Considered to be in restraint of trade and void. However, those restraints that protect the employer’s legitimate business interests may be enforced if reasonable. They must be tailored for the specific business and the risks posed by the employee. Garden leave is common for senior employees.

Non-competes

Permissible in narrow, justifiable circumstances, if reasonable. Typically no longer than 6 months (maximum of 12 months), depending on the circumstances.
Customer non-solicits
Generally permissible. Usually 6 to 12 months. Not yet tested in this jurisdiction.

Employee non-solicits
Permissible. Usually 6 to 12 months.

WAIVERS
Enforceable.

REMEDIES

Discrimination
Uncapped compensation; damages are at the court’s discretion.

Unfair dismissal
Before the labor office: Basic compensatory order of 4 weeks' wages; an additional compensatory order, based on claimant's length of service; reasonable expectations; opportunities available to secure comparable employment (minimum of 4 weeks' wages and maximum of 3 months' wages) plus compensation for breach of due process (1 month's wages) plus severance (negotiable). Reinstatement or reengagement is possible but rare.

Damages in the industrial court are awardable at the court's discretion.

Failure to inform & consult
Failure to inform representatives of a labor union (if any) that represents employees in the organization of impending collective terminations at least 4 weeks before the first terminations, or failure to notify the Commissioner for Labor of the collective terminations, is an offense punishable by a fine not exceeding 24 currency points. Each currency point is UGX20,000.

CRIMINAL SANCTIONS
Violation of certain provisions of the Employment Act may trigger criminal sanctions. For example, a person who records or causes to be recorded wrong, inaccurate or deficient information in an employee’s records of service with an intention to defraud the employee or employer or any public authority, or who acts to conceal such fraudulent acts, commits an offense, as does an employer or employee who fails, without justifiable cause, to reply to a labor officer’s written request for information within a period of 14 days from the time the request was received by the employer or the employee, as the case may be.
KEY CONTACTS

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UKRAINE

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. The official currency is the hryvnia (UAH). The official language is Ukrainian.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity cannot engage employees in Ukraine without a local corporate presence. Furthermore, the engagement of employees in Ukraine without a local corporate presence may give rise to a permanent establishment risk.

PRE-HIRE CHECKS

Required

For non-Ukrainian citizens, employers must check for compliance with immigration requirements and obtain work permits unless either the employer or employee falls under a special category, as discussed in the “Immigration” section below.

Employees must provide a valid ID and – except for in the case of first-time employment – their labor book (if any; as of June 2021, it is an optional document) or information on labor activity from the register of insured persons of the State Register of Compulsory State Social Insurance. On a case-by-case basis, employers may request employees to provide documents confirming, for example, education (i.e., specialty or qualification) and health status to confirm compliance with requirements established for a specific profession, position or the work performed. For example, to be employed as an officer responsible for labor protection, an individual shall provide the employer with a certificate that proves the employee's knowledge in the area of labor protection or, if the job description provides that the employee's duties will include operation of a vehicle, the employer is entitled to require a driving license.

Permissible

An employer cannot require candidates or employees to provide additional documents or information not specifically required by law as a condition precedent to the employment. The ability to conduct any pre-hire or
post-hire checks is very limited by labor and personal data protection laws. In most cases, checks not expressly required by law are possible only with written consent.

**IMMIGRATION**

Employers must generally obtain work permits to hire foreign individuals. There are exceptions for special categories of individuals who may be hired without a work permit and special categories of employers that can hire foreigners without a work permit. For example, employers do not need to obtain work permits for foreign employees with valid permanent residency permits, individuals performing teaching and scientific activity in higher educational institutions or foreigners who obtained a status of refugee according to Ukrainian law. Further, representative offices of foreign companies registered in Ukraine do not need to obtain work permits for foreign employees. An official card shall be obtained instead, which is a standard form document issued by the Ministry of Economic Development, Trade and Agriculture of Ukraine that confirms employment of a foreigner with a duly registered representative office in Ukraine.

In addition to a work permit, a foreign employee should obtain a temporary residency permit to stay in Ukraine on a long-term basis. This requirement falls on the individual and not the employer, though an employer may be required to provide supporting documents for the individual to obtain a temporary residency permit.

**HIRING OPTIONS**

**Employee**

Employment can be for part-time or full-time employment and for different durations. Employment may be:

- Indefinite (most commonly used)
- Fixed-term (restricted to specific cases – for example, when an employee is hired to perform the duties of a temporarily absent employee or is hired to a specific position, such as a state official or judge), or when an employee insists on the fixed-term employment agreement due to personal reasons)
- Until completion of an agreed-upon project, when it is impossible to determine the project’s duration.

**Independent contractor**

The use of independent contractors is permitted, but contractors may be reclassified as employees by the relevant authorities if misclassified. Penalties may be imposed in case of reclassification.

**Agency worker**

Engaging agency workers is common for employers that need temporary employees from time to time or that cannot hire the employees directly due to global headcount reasons. A Ukrainian employer may engage agency workers only if:

- such engagement is directly allowed by the agency’s collective agreement and is based on the consent of the relevant trade union
• the employer has not had a staff reduction within the year prior to commencement of such engagement
• the employer complies with the statutory ratio of employees of the main professions who are engaged in the technological processes of the main production
• the engaged agency workers will not perform the work of employees of the main professions of the technological process of the main production
• the agency workers will not work in a hazardous, physically demanding or dangerous work environment

Due to legal uncertainty in the regulation of agency workers, agency workers are often engaged under general services agreements.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

An employment agreement must be made in writing and specify the employee’s name and the terms and conditions of employment, including, for example, the position, duties, employment commencement date, place of work, working time, probationary period and wages.

A special IT industry regime called Diia City was adopted in Ukraine in 2021. This regime is aimed at creating favorable conditions for the companies operating in the tech sector. Under this regime, a new form of contract was introduced: a gig-contract (i.e., a contract that combines elements of labor and civil relations). Employment contracts may be concluded with employees of Diia City residents.

Probationary periods

Generally, probationary periods may not exceed 3 months; however, they may last 6 months in certain circumstances, subject to the applicable trade union’s consent. The probationary period must be reflected in the employment agreement.

Policies

Written internal policies, such as an internal labor regulation and labor safety regulation, are mandatory. Employers may adopt other policies and regulations. For global policies to be enforced in Ukraine, employers must incorporate these locally, including having them translated into Ukrainian and approved as outlined below.

Third-party approval

Internal labor regulations must be developed by an employer and a trade union, if any, and further approved by the labor collective – that is, a general meeting of at least 50 percent of the employees.

Employment agreements do not require third-party approval, but changes to employment agreements and/or terminations may require notification and/or approval from the applicable trade union.

LANGUAGE REQUIREMENTS
All employment documents and internal regulations must be in Ukrainian or bilingual, if needed.

**MINIMUM EMPLOYMENT RIGHTS**

**Employees entitled to minimum employment rights**

All employees are entitled to the minimum statutory employment rights.

**Working hours**

Standard working hours must not exceed 40 hours per week. If an employee's work regime differs from the standard one (i.e., 5 working days per week and 8 working hours per day), the calculation of maximum working hours per respective period is performed using a specific methodology. For instance, in certain cases, the working time may be calculated not on a weekly basis but based on another period (e.g., month or half a year). In such cases, the working hours are considered overtime only if the number of hours of the relevant employee exceed the normal number of working hours for the relevant period.

For certain categories of employees (e.g., those working under hazardous conditions or underage employees), the maximum number of working hours per week is less than 40 hours.

Some categories of employees (e.g., pregnant women or women who have children under 14 years old) may request the employer to establish a decreased number of working hours.

**Overtime**

As a general rule, all hours worked in excess of 40 hours per week (and/or in excess of the number of working hours per day established by the employment agreement, internal regulations or collective agreement – usually 8 hours per day for a 5-day working week) are treated as overtime, with the exception of special work regimes and non-standard working regimes. Overtime is allowed only under the following exceptional circumstances defined in the Labor Code:

- performance of work necessary for country defense or prevention of natural or civil disasters or industrial accidents as well as elimination of consequences of such accidents

- performance of socially important work necessary for renewal of community facilities, which are disrupted due to unexpected or accidental circumstances

- performance of work which was commenced but cannot be finished within normal working hours due to unexpected accidents or delays, if such work is needed to prevent damage or loss of state or communal property

- performance of work necessary for urgent renovation of machines, if malfunctions of such machines results in the work stoppage for significant number of workers

- performance of urgent cargo-handling operations for avoidance or prevention of demurrage of transport or accumulation of cargo in departure and destination points and
• work continuation, if the employee who starts their shift is absent, when work cannot be interrupted. In this case, the employer shall immediately take actions to replace such employee who continues to work after their shift has ended.

The maximum limit of overtime work is 120 hours per year and 4 hours over 2 consecutive days for the same employee. The employer must keep a record of overtime work.

Overtime must be compensated at double the regular rate. Employers cannot compensate overtime with time off.

Some categories of employees may not be required to work overtime (eg, pregnant women or employees under 18) or may only be engaged in overtime work with their consent (eg, women who have children of the age from 3 to 14 years old or individuals with disabilities).

Wages

Statutory minimum wages are established by law on a yearly basis. As of January 1, 2022, the minimum wage is approximately USD225 (UAH6,500) per month for full-time employment or USD1.36 (UAH39.26) per hour.

Vacation

The general statutory minimum annual vacation is 24 calendar days. Special categories of employees (eg, employees under 18 years old or some categories of disabled individuals) and/or employees working under specific positions, regimes or conditions of work (eg, employees working under a non-standard working hours regime) are entitled to additional vacation days. There are additional statutory paid and non-paid social vacation days. For instance, women who have 2 or more children under 15 years old or have a child with disabilities are entitled to 10 calendar days of paid social vacation per year. At the same time, the employer is obliged to grant to certain categories of disabled individuals unpaid social vacation of up to 60 calendar days.

Sick leave & pay

The compensation of the first 5 days of the sick leave must be paid at the expense of employer. A portion of the employee’s compensation starting from the 6th day of the sick leave and for the entire period until the restoration of ability to work or until the establishment of disability by the medical and social expert commission (ie, state commission responsible for determining disability) will be paid at the expense of the State Social Insurance Fund by the employer.

In general, employers cannot dismiss employees during the sick leave period. Ukrainian laws allow employers to dismiss an employee if their sick leave exceeds 4 continuous months, except for the leave for pregnancy and birth, unless a longer period of retention of a position is established by law for particular illnesses. Positions of employees who became temporarily disabled due to an occupational injury or a professional illness must be retained until restoration of working capacity or establishment of disability.

In 2021, Ukraine launched a sick-leave e-certificate system. Accordingly, employers may view information on an employee’s illness in the e-certificate electronic register. At the end of the sick leave, employees are not required to present employers with a paper certificate from a medical institution as proof, except for a few cases where such certificates will be issued until May 2022.

Maternity/parental leave & pay
Women are generally entitled to a maternity leave of 126 calendar days (ie, 70 calendar days prior to childbirth and 56 afterwards), or 140 calendar days (ie, 70 calendar days prior to childbirth and 70 afterwards) in the case of the birth of 2 or more children or complications in childbirth. The amount of compensation depends on the employee's salary as well as continuity of their work during the last 12 months prior to the maternity leave. The law sets maximum and minimum amounts of maternity leave compensation. Compensation for maternity leave is paid by the employer at the expense of funds provided by the State Social Insurance Fund.

After maternity leave, the mother is entitled to childcare leave until the child is 3 years old (in some cases, 6 years old – for instance, if a child requires home care). Any other relative of the child may take leave instead of the mother, provided that there is a proper confirmation that the mother of the child is working full time.

An employee may not be terminated by the employer during maternity or childcare leave and may start or stop childcare leave at any time before the child turns 3 (or, in certain cases, 6) years old.

**DISCRIMINATION**

Discrimination based on any ground unrelated to ability to perform job duties is prohibited. Prohibited grounds include, for example, race, ethnic or social origin, political, religious or other beliefs, skin color, gender identity, sexual orientation, disability, family and property status, membership in a trade union or other civil group, participation in a strike, language attributes or age.

**BENEFITS & PENSIONS**

Employers must make regular deductions from employees' salaries for contributions to the state pension fund. Private pension plans may be implemented at employers' discretion.

**DATA PRIVACY**

In most cases, the processing of personal data requires the consent of the respective data subject. However, employers are allowed to process an employee's basic personal data without consent to the extent required to perform the employer's statutory obligations (eg, pay salary or statutory reporting).

Processing of sensitive data (eg, health status data, data related to religious beliefs or political views) is prohibited, unless the individual provides explicit consent or there is a statutory ground for processing these categories of data. The processing of sensitive data requires notification to the Ukrainian Parliament Commissioner for Human Rights.

Cross-border personal data transfers require documents such as an intercompany agreement on the transfer of data in addition to the data subject's consent.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

In the event of a change of a company's ownership or a company's reorganization (eg, merger or spinoff), employment continues with the company or its successor without change in terms and conditions. In case of an asset deal, however, employment must be terminated and rehired.
EMPLOYEE REPRESENTATION

Local trade unions may be established by any 3 employees of a company. According to the law, a trade union should notify an employer of its establishment. However, an employer cannot restrict or prohibit the establishment of a trade union. Employees' representatives are elected at the general meeting of employees. In practice, trade unions are usually not elected in small companies, and they are more influential for mid-sized and large companies, especially for those using special working regimes and have special conditions of work.

Trade unions must be notified and, in some cases, must consent or approve before employers take certain employment actions, including redundancy, dismissal of a trade union member or introduction of an unusual working regime. On the other hand, elected employee representatives have limited authority as compared to trade unions and usually act, if a trade union is not established.

Under Ukrainian laws, each Ukrainian entity that has employees must conclude a collective agreement with its employees. If no collective bargaining is initiated by either an employer or employees (and, consequently, no CBA is concluded), no negative consequences would arise for an employer. Such agreement is negotiated by a trade union, if it exists, or employee’s representatives and, after it is approved by all parties, must be registered by the local government. There are no work councils.

TERMINATION

Grounds

The following are the main grounds for termination under Ukrainian legislation:

- Termination by the employee with 2 weeks' prior notice
- Termination by the employer’s initiative based on grounds directly defined by law (eg, redundancy, non-compliance of the employee with the positions due to lack of qualification or issues with health or systematic violation of employment obligations)
- Termination on the basis of the agreement of the parties
- Expiration of the term as per the employment agreement
- Retirement (general statutory age for retirement is 60 years but may differ for some categories)

For the first 2 items, other notice periods or specific procedures may be agreed with certain categories of employees on special types of employment contract, such as CEOs.

Employees subject to termination laws

All employees.
Restricted or prohibited terminations

The following categories of employees, among others, may not be dismissed except in the case of the company's liquidation:

- pregnant women
- individuals with children under 3 years old
- single parents with disabled children or children under 14 years old, among others.

Special dismissal procedures are applicable to employees under 18 years old and trade union members.

Third-party approval for termination/termination documents

Employers must seek the applicable trade union’s consent when terminating the following categories of employees:

- a trade union member, based on the grounds of redundancy, when inconsistency of the employee within the occupied position is discovered
- an employee who is accused of guilty actions in relation to the managing employer’s funds or other material valuable items, if such actions resulted in the loss of trust in such employee
- an employee performing pedagogical functions who is accused of immoral misconduct that prevents such employee from maintaining their position

In case of liquidation, reorganization, change of ownership or partial termination of production which leads to the redundancy or worsening of the work condition, the employer shall notify the trade unions in advance.

Mass layoff rules

Mass layoff is defined as the termination of:

- 10 or more employees in companies with 20 to 100 employees during a 1-month period
- at least 10 percent of the employee population in companies with 101 to 300 employees during a 1-month period
- at least 20 percent of the employee population (regardless of the total number of employees) during a 3-month period

The employer must notify the local office of the State Employment Center regarding the mass layoff at least 2 months prior to the layoffs.

Notice

The period of mandatory notice to the employee varies and depends on the grounds for termination (eg, 2-month notice for redundancy, no notice period for termination based on the mutual consent of the parties and 2-week notice for termination if initiated by the employee). The notice period for termination based on the employer’s
initiative may be increased under the employment agreement or collective agreement.

Statutory right to pay in lieu of notice or garden leave

No. Ukrainian law does not recognize garden leave or payment in lieu of notice.

Severance

The amount of severance payment depends on the ground of termination and varies from 1 up to 6 average monthly salaries. Namely, the employee is entitled to severance payment in the amount:

- not less than 1 average monthly salary in cases of redundancy, refusal of the employee to continue their employment under changed work conditions, revealed inconsistency of the employee with the occupied position as a result of insufficient qualification or health conditions which prevent work from continuing or re-instatement of the employee who held the position earlier
- 2 statutory minimum salaries in case of mobilization or commencement of military duty
- not less than 3 average monthly salaries if the employment terminates due to employer’s violation of labor legislation, collective bargaining agreement or employment agreement
- not less than 6 average monthly salaries if the employee is terminated due to termination of their authority as the company’s officer (eg, CEO)

The applicable collective agreement or employment contracts may establish higher amounts of severance payments.

There are no special rules that regulate the severance payment in case of mass layoffs, and, under the general requirement, 1 month’s average salary must be paid as severance.

POST-TERMINATION RESTRAINTS

Generally unenforceable. In practice, restrictive covenants may be included in separate (ie, non-employment) agreements with top-management-level employees.

Generally unenforceable in respect of regular employees. In practice, restrictive covenants may be included in separate (ie, non-employment) agreements with top-management-level employees.

A possibility to conclude non-compete agreements was recently introduced for Diia City residents in respect of their employees/gig-contractors.

Non-competes

Ukrainian labor laws permit employers to restrict their employees to work for specific employers or any employers during the term of employment. Additional restrictions for the members of the executive body of limited liability and additional liability companies (eg, directors) were introduced in 2018.

For instance, the members of the executive body cannot, without a consent of general meeting or supervisory
board:

1. Carry out economic activity as a private entrepreneur in the field of the company’s activity
2. Be a member of a general partnership or a full member of a limited partnership, which carries out activities in the field of the company’s activity, or
3. Be a member of the executive body or supervisory board of another legal entity that carries out activities in the field of the company’s activities.

Breach of these obligations by the members of the executive body shall lead to termination of employment relations.

At the same time, Diia City legislation allows for non-compete agreements between Diia City residents and their employees/gig-contractors. Such non-compete agreements should be concluded in writing and should include compensation for non-compete, the term length (maximum duration of 12 months upon termination of relations), the territory and an exhaustive list of competitive activities.

Customer non-solicits

Generally unenforceable.

Employee non-solicits

Generally unenforceable.

WAIVERS

Waivers of statutory rights are unenforceable.

REMEDIES

Discrimination

There are no special remedies for employees in case of discrimination, but employees may bring claims for compensation for moral and material damages. Employment discrimination may be classified as labor law violations subject to fines.

Unfair dismissal

Re-instatement on the previous terms and conditions and compensation for lost salary plus compensation for moral and material damage may be awarded in case of unfair dismissal. Moreover, company officers may face administrative and criminal liability.

Failure to inform & consult

Failure to inform and consult with trade unions if required may be deemed a violation of dismissal procedures, and re-instatement may be ordered by a reviewing court.
CRIMINAL SANCTIONS

Ukrainian labor law provides for the following categories of liability for violations of the labor law:

- Financial penalties of up to approximately USD6,500, which may apply to the company.

- Administrative fines for violations of the Code of Administrative Offenses, which may be imposed on company officers.

- Criminal sanctions, including imprisonment, for company officers for gross violations of labor laws (e.g., intentional and unjustified failure to pay salary for a period exceeding 1 month).

KEY CONTACTS
LEGAL SYSTEM, CURRENCY, LANGUAGE

Federal and civil legal system; employment matters are governed by Federal Law No. 33 of 2021 (the Labor Law), as amended. There are additionally relevant provisions in the Penal Code and Civil Code. The official currency is the Dirham (AED). The official language is Arabic.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity cannot directly engage employees in the UAE. It must have at least a branch or representative office to engage any employees, including local nationals. This is because all employees need a work permit – or employment ID card in the free zones – in order to work in the UAE, which requires a local sponsor. The only alternative is to have a secondment arrangement, whereby a local entity sponsors the employee for their work permit, but the individual is then seconded out to the foreign entity or provides services under a services agreement. This structure may not be legal under relevant immigration and licensing laws.

PRE-HIRE CHECKS

Required

Foreign employees must receive prior approval from the Ministry of Human Resources and Emiratization (MOHRE – formerly, the Ministry of Labor), or relevant free zone authority, and the immigration authorities before they can be hired on local employment contracts. The level of background checking and screening carried out by the UAE authorities varies according to the nationality of an individual. As part of this approval process, since January 2016, employers registered with MOHRE are now required to submit a completed offer letter, signed by both parties, using MOHRE’s standard form offer letter. The terms of the employee’s employment contract cannot then differ from the terms of the offer letter.

Permissible

Generally, employers in the UAE are not able to obtain the same level of information from background checks as they can in other jurisdictions, and in most cases, the employees themselves will be required to provide this information.
IMMIGRATION

In order to legally work and reside in a particular Emirate, all employees except GCC and UAE nationals – who require a work permit only – are required to have a residence visa and work permit under the sponsorship of their employer, which must have an entity established in the UAE. Alternatively, married women may work under the sponsorship of their husbands or vice versa. In free zones, employee ID cards are issued in place of work permits. Additionally, the free zone authority, rather than the employing company, acts as the employee’s sponsor.

When an employee is only required to visit or work in the UAE for a short period of time, there are alternative permits and visas that may be applied for, including business visit visas and mission visas.

HIRING OPTIONS

Employee

All employees must be employed on fixed-term contracts. Part-time employment is legally possible but is not common.

Independent contractor

There is a limited concept of a consultant, unless individuals have established their own professional license and business. This is due to the requirement for employees to have sponsorship, which is generally obtained by the employer.

Agency worker

There is no general concept of an agency worker or "temp" in the UAE. Some Emirati-owned employment agencies are licensed to provide manpower on a temporary basis; those workers would remain under the relevant agency’s sponsorship.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

Employers are required to issue an MOHRE standard form offer letter, containing the key terms and conditions of employment, to employees.

Employees are then required to sign an MOHRE government employment contract to obtain their work permit or employee ID card and – in the case of non-UAE/GCC nationals only – residence visa. The MOHRE employment contract is in English and Arabic. Since January 2016, such contracts are based on a new MOHRE standard template. The employment contract must reflect exactly the terms of the offer letter previously provided to the employee. Any changes must be approved by the MOHRE and the employee and must be to the employee’s benefit; otherwise, it is unlikely they will be approved.

Probationary periods
Permissible. Maximum duration of 6 months, during which time employment may be terminated on 14 calendar
days’ notice, increasing to 30 calendar days’ notice on the part of the employee where the individual is leaving to
join another UAE employer. Where an employee leaves during probation the employer may be able to recoup
some of the recruitment costs from the new employer in certain circumstances.

Policies

There are no mandatory policies. If an employer wants to rely on a disciplinary policy and procedure document
onshore, it is technically required to first lodge this with the MOHRE. In practice, however, many employers do
not lodge their disciplinary procedures. Employees should be provided with any relevant staff handbook and the
employer’s policies, if applicable, on commencement of employment.

Third-party approval

For employers registered with MOHRE, the government employment contract must be lodged with MOHRE to
obtain the employee’s work permit and residence visa. Most free zone authorities additionally have a standard
form of contract used to obtain the employee’s work permit and residence visa, although some free zones allow
employers to submit their own employment contract. As indicated above, changes to the terms of the
employment contract for employees operating onshore (ie not in a free zone) require the prior approval of
MOHRE and the employee, and such changes must be to the employee’s benefit. In practice, both onshore and in
the free zones, employers still use their own supplemental contracts in addition to the standard MOHRE and
Free-zone standard forms. Employers in a free zone must obtain the approval of the free zone authority to hire
new employees.

LANGUAGE REQUIREMENTS

Pursuant to the Labor Law, all employment contracts and records must be in Arabic. In practice, however, English
documentation is used in many businesses onshore. The MOHRE standard contract is now issued in dual English
and Arabic and dual with other popular largely South Asian languages. Where a foreign language is used in addition
to Arabic, the Arabic version will prevail.

In free zones, the Arabic language requirement is not always enforced, although employment documentation must
be in a language that the employee can understand.

In the event of a dispute, any document used in the courts must be translated into Arabic and, again, the official
translation in Arabic will prevail.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All. Additional rights are also available to young workers (ie, those aged 15 to 18) and women.

Working hours

Eight hours per day or 6 hours during Ramadan. This equates to a 48-hour maximum working week for a 6-day
working week, Sunday to Thursday (inclusive), or 36 hours for a 6-day week during Ramadan. The working hours
provisions presume that the employee is working a 6-day week.

Overtime

Overtime is not to exceed 2 hours per day, unless the work is essential for preventing a substantial loss or serious accident or for eliminating or relieving the impact of a serious accident. Different increments apply depending on when the overtime occurs.

The overtime and maximum working time provisions in the Labor Law do not apply to employees holding senior executive managerial or supervisory positions.

Wages

At present, there is no minimum wage for employees in the UAE save in respect of Emirati employees, where a fairly low minimum threshold of AED5,000 per month applies for employees (ie, degree holders) to count for Emiratisation purposes. Presently, employees must earn at least AED4,000 per month in order to sponsor dependents on their visas.

Vacation

Two calendar days per month where the employee's period of service is more than 6 months but less than 1 year; 30 calendar days per year where the employee's period of service is more than 1 year.

Sick leave & pay

An employee is not entitled to statutory sick leave during the probationary period or 3 months thereafter. Employees are entitled to 90 calendar days' sick leave per year of service thereafter (15 days at full pay, 30 days at half pay and the remaining days without pay).

Maternity/parental leave & pay

60 calendar days' maternity, with the first 45 days at full pay and the remaining 15 at half pay, irrespective of length of service. A pregnant employee can take a further 45 consecutive or non-consecutive days of unpaid leave if the employee falls ill as a result of her pregnancy or the delivery of her baby.

Male and female employees are entitled to a further 5 working days of paid leave to be taken within 6 months of the birth of the child.

DISCRIMINATION

Since August 2015, legislation has been in force that was primarily designed to combat religious contempt and intolerance. However, through the introduction of the wide definition of "discrimination," it may have broader consequences for the workplace. Under the new legislation, discrimination is defined as any distinction, restriction, exclusion or preference on the basis of one of the protected characteristics (religion, creed, doctrine, sect, caste, race, color or ethnic origin). This new discrimination law does not remove discriminatory provisions in existing law, such as positive discrimination in favor of national employees or any advantage, preference or benefit upon women, children, disabled persons, the elderly or others prescribed by any other legislation.
There are also specific anti-discrimination provisions in the Dubai International Financial Centre Free Zone Employment Regulations and the Abu Dhabi Global Market Regulations.

Under the UAE Labor Law, there are provisions which state that a woman must be paid the same as a man if she performs the same work. A new draft pay equality law has now been issued. In addition, as per legislative amendments made in 2019, a woman cannot be terminated or issued with a warning because of her pregnancy. Further amendments in 2021 introduced protected characteristics, albeit with no specific remedies where an employee successfully alleges discrimination.

Under the new discrimination legislation, it is important to note that the representative, director or agent of a legal entity may be held vicariously liable for offenses under that law committed by employees of that entity. In order for vicarious liability to arise, the offense must have been committed with the knowledge of the representative/director/agent, and the employee must have been acting in the entity’s name or to its interest.

**BENEFITS & PENSIONS**

The employer is required to enroll and make contributions and employee deductions for the state pension funds for UAE national and GCC national employees. High earners in the UAE and GCC are entitled to an end-of-service gratuity (EOSG) for their earnings over AED50,000. All other employees are entitled to receive an EOSG on termination based on their full earnings, calculated by reference to age and length of service, unless the employer contracts out of these arrangements with its employees by providing a savings scheme or pension scheme.

Employers in the Dubai International Finance Centre Free Zone are required to register employees with a mandatory savings scheme. Employers may either register with a plan established by the Dubai International Finance Centre or establish their own plan, subject to the requirements of the Dubai International Finance Centre Free Zone.

Dubai and Abu Dhabi each have their own health insurance laws that apply across the respective emirates, including in the free zones, and which require all employers to provide compulsory health insurance to every employee. In Abu Dhabi, mandatory cover for employees extends to each employee’s dependents (ie, a spouse and up to three children under the age of 18). In Dubai, coverage for dependents is not compulsory; however, it is common practice to extend cover to include family members.

**DATA PRIVACY**

2021 saw a new data privacy law issued in the UAE, which borrows certain concepts from the GDPR.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

No automatic transfer principles and no laws covering business transfers. Employees transfer through termination andrehire in an asset deal. Contracts of employment, residence visas and work permits must be addressed.

**EMPLOYEE REPRESENTATION**
No employee representation exists. Membership in an unauthorized trade union and industrial action are both criminal offenses for which an individual could be fined and imprisoned, and, in the case of expatriate workers, deported.

**TERMINATION**

**Grounds**

Termination is possible on these grounds: by agreement, on the expiry of a fixed-term contract, through resignation, through incapacity or death, through dismissal with notice provided it is for a valid reason or through summary dismissal by reason of any of the grounds listed at Article 120 of the Labor Law.

**Employees subject to termination laws**

All employees.

**Restricted or prohibited terminations**

Employees who have not exhausted the statutory sick-leave entitlement are protected from dismissal on grounds of health, until the full sick-leave entitlement has been taken (i.e., 90 calendar days per year of service).

**Third-party approval for termination/termination documents**

UAE nationals are entitled to higher protection from dismissal. As part of such additional protection, approval from MOHRE is recommended before the employment of a UAE national can be terminated.

**Mass layoff rules**

No mass layoff rules exist.

**Notice**

Statutory minimum notice of 30 days. Maximum permitted notice of 3 months.

**Statutory right to pay in lieu of notice or garden leave**

Depends on contract terms.

**Severance**

Unless terminated under Article 120 of the Labor Law, employees are entitled to salary and benefits to the termination date, notice (or payment in lieu), payment in lieu of accrued but untaken annual leave, the cost of a flight/air ticket to repatriate the employee to their home country (unless (i) dismissal is attributable to employee and the employee has the funds to pay their own costs; or (ii) the employee has obtained alternative sponsorship to remain in the UAE), an end-of-service gratuity payment and reimbursement of unpaid business expenses. In case of employer termination, the end of service gratuity is computed at 21 days’ pay per year of service for the first 5 years of employment, provided the employee has reached a year’s service (pay to include basic pay only) and 30 days’ pay for each subsequent year. Such payment cannot exceed 2 years’ pay.
POST-TERMINATION RESTRAINTS

It is permissible to include restrictive covenants in the employment contract, provided that the employee is at least 21 years of age when entering into the restrictions, the employee has become acquainted with the employer’s clients or the secrets of the business and the covenants are limited in relation to their duration, geographic scope and the nature of the business to be protected.

Parties are permitted to include a liquidated damages clause in the employment contract as it is not possible to obtain an injunction onshore in the UAE, although there are rules against “exorbitant” penalties being applied in employment contracts under the Civil Code. As of March 2017, it is possible to seek a ban on the employee's residence visa if they are in breach of a restrictive covenant which would prevent them from working in the territory of UAE.

Non-competes

Typically no longer than 6 to 12 months.

Customer non-solicits

Typically no longer than 6 to 12 months.

Employee non-solicits

Permissible.

WAIVERS

Waiver agreements are commonly used, but their enforceability has not been tested by the UAE courts. In theory, there is a principle of estoppel issue which can apply (ie, an employee should not be able to deal with a specific issue in a legal settlement or proceeding for a second time around).

REMEDIES

Employee non-solicits

Potential penalties for breach of anti-discrimination provisions under the new law are imprisonment for a minimum of 5 years and/or a fine of a minimum of AED500,000 and a maximum of AED1 million.

Arbitrary dismissal

The maximum award is 3 months' pay (to include salary and benefits/allowances).

Failure to inform & consult

Not applicable for this jurisdiction.
CRIMINAL SANCTIONS

Criminal sanctions can be imposed for a variety of reasons, including but not limited to the setting up of a trade union, breach of health and safety obligations, breach of immigration laws, breach of data protection laws and breach of confidentiality.

KEY CONTACTS

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LEGAL SYSTEM, CURRENCY, LANGUAGE

Common law. The official currency is the pound sterling (GBP). The UK left the European Union (EU) on January 31, 2020; however, the UK’s exit was followed by a transition period during which the UK was still subject to EU rules. The transition period ended on December 31, 2020. However, while there is now no freedom of movement of workers between the UK and the EU, there is little immediate impact on employment laws which will continue to apply indefinitely until UK legislators seek to make changes – which, under the terms of the Trade and Cooperation Agreement agreed between the UK and EU, are only permitted if they do not impact on trade or investment.

The official language is English.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity may engage in the UK with proper payroll registrations, subject to business and corporate tax planning considerations. Withholdings for pay-as-you-earn (e.g. social charges – up to 13.8 percent for the employer portion and 12 percent for the employee portion up to a certain threshold and 2 percent thereafter) and income tax (up to 45 percent) to be done through payroll. Self-employed independent contractors are paid gross and are responsible for their own taxation.

PRE-HIRE CHECKS

Required

Immigration compliance. For certain limited occupations (e.g. solicitors or chartered accountants), a criminal records check.

Permissible

Criminal and credit reference checks are only permissible for specific roles (e.g. certain finance positions) and are subject to proportionality requirements. Reference and education checks are common and permissible with applicant consent.
IMMIGRATION

The UK left the EU on January 31, 2020, but was subject to a transition period between February 1, 2020 and December 31, 2020.

Until December 31, 2020, nationals of the European Economic Area (EEA) and Switzerland had the right to work in the UK. EU nationals who were already resident in the UK by December 31, 2020 are now able to stay in the UK indefinitely provided they apply for either pre-settled or settled status under the EU Settlement Scheme (EUSS) by no later than June 30, 2021. Otherwise, EU nationals who do not qualify for a status under the EUSS as well as all non-EU nationals are now subject to a new immigration system which requires sponsorship by an employer in order to be able to work in the UK.

HIRING OPTIONS

Employee

Indefinite, fixed-term, full-time or part-time. Part-time and fixed-term employees have the right not to be discriminated against on the basis of their employment status.

Independent contractor

Independent contractors may be engaged directly by the company or via a personal services company. Engagement may be subject to misclassification exposure, whether as an employee or worker.

Workers

A "worker" has fewer rights than an employee but more than an independent contractor. A worker works under a contract for personal service (i.e., they cannot send a substitute) with another party whose status is not one of customer or client to the individual.

Agency worker

Agency workers are common and are typically either employees or workers. Agency workers have the right to equal treatment to employees in relation to pay and other benefits terms after a 12-week qualifying period.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

Common best practice. As of April 6, 2020, employers are required to provide detailed information on employment terms to both new employees and workers from day 1 of employment.

Probationary periods

Permissible. No statutory limit, but 3 to 6 months is common.

Policies
A written health and safety policy and disciplinary and grievance policy are mandatory. The latter must be referenced in the contract of employment.

Third-party approval

No requirement to lodge employment contract or policies with, or get approval from, any third party.

**LANGUAGE REQUIREMENTS**

No statutory requirements, but all documents should be in English.

**MINIMUM EMPLOYMENT RIGHTS**

Employees entitled to minimum employment rights

All.

**Working hours**

48 hours per week limit on working time; opt-out possible. Rules on rest breaks, night work and rest periods between shifts.

**Overtime**

No obligation to provide pay for overtime worked as long as pay overall does not fall below the statutory minimum.

**Wages**

<table>
<thead>
<tr>
<th>Age Category</th>
<th>Minimum Wage Rate as of April 2020 (GBP)</th>
<th>Minimum Wage Rate as of April 2021 (GBP)</th>
</tr>
</thead>
<tbody>
<tr>
<td>25 years old or over</td>
<td>8.72</td>
<td>8.91</td>
</tr>
<tr>
<td>21 - 24 years old</td>
<td>8.20</td>
<td>8.36</td>
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<tr>
<td>18 - 20 years old</td>
<td>6.45</td>
<td>6.56</td>
</tr>
<tr>
<td>16 - 17 years old</td>
<td>4.55</td>
<td>4.62</td>
</tr>
<tr>
<td>Apprentices</td>
<td>4.15</td>
<td>4.30</td>
</tr>
</tbody>
</table>

**Vacation**

5.6 weeks’ vacation per year (which includes 8 public holidays).

**Sick leave & pay**
No right to take time off for sick leave, but most contracts allow this. Employees are entitled to receive 28 weeks’ statutory sick pay at GBP95.85 per week, which will rise to GBP96.35 in April 2021 and is generally funded by the employer.

Maternity/parental leave & pay

52 weeks of maternity leave, paid for 39 weeks (ie, 90 percent of pay for first 6 weeks, then the statutory rate of GBP151.20 per week, rising to GBP151.97 in April 2021), and right to return to work. 2 weeks of paternity leave at birth, paid at the statutory rate subject to eligibility requirements. New parents may take 18 weeks of unpaid parental leave after the initial paid leave is up. Same rights for adopting parents. Subject to eligibility, a mother may also end maternity leave after 2 weeks and share the remaining 50 weeks of parental leave with the other parent (paid at the statutory rate, if eligible).

DISCRIMINATION

Direct and indirect discrimination is prohibited, along with victimization and harassment. Employers are under a duty to make reasonable adjustments for persons with disabilities.

Characteristics protected from unlawful discrimination and harassment: age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex or sexual orientation.

BENEFITS & PENSIONS

Currently, no benefits required above those covered under social insurance contributions.

There is a state pension system provided by the government with eligibility determined by the national insurance contributions that have been paid or credited. Employers are required to automatically enroll eligible workers into a pension scheme and pay minimum contributions. Workers who are automatically enrolled have a right to opt out of the scheme.

DATA PRIVACY

As of the end of the transition period following the UK’s exit from the EU, the UK is subject to the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018, which impose significant obligations and onerous sanctions for employers. Under this regime, it is extremely difficult for employers to rely on consent as a basis for processing employee data, and other legitimate grounds generally must be identified.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Automatic transfer under the UK’s Transfer of Undertakings (Protection of Employment) Regulations (TUPE) in a business sale or service provision change. Significant restrictions on changing terms and conditions following a transfer. Duty to inform and consult with employee representatives. Any dismissal connected to the transfer would be unfair unless for an economic, technical or organizational reason.
EMPLOYEE REPRESENTATION

Trade unions are prevalent in certain sectors (e.g., manufacturing, transport and the public sector). 25 percent of workers are members, but most are employed in the public sector. Many businesses have no union or other worker representation. Works councils are uncommon. Industry-level collective bargaining agreements are uncommon.

TERMINATION

Grounds

Termination is permissible, if a fair process has been followed, on the following grounds only: misconduct, capability (including performance and ill-health), redundancy, illegality and "some other substantial reason of a kind to justify dismissal."

Employees subject to termination laws

Employees with fewer than 2 years’ seniority have no unfair dismissal protection, save in certain circumstances where no seniority is required, including dismissals for whistleblowing, connected to family/pregnancy rights, trade union membership and activities, among others.

Restricted or prohibited terminations

No statutory prohibitions.

Third-party approval for termination/termination documents

Not required.

Mass layoff rules

Strict information and consultation rules apply where 20 or more employees are to be made redundant within 90 days or less. The employer must also notify the Secretary of State of the redundancies. Failure to do so is a criminal offense.

Notice

No notice required in the first month of employment. After this, 1 week’s notice per complete year of service, up to 12 weeks. May be required to give longer notice, if reasonable. Not required for terminations for gross (i.e., extremely serious) misconduct. Longer notice may be agreed upon and set out in the contract of employment.

Statutory right to pay in lieu of notice or garden leave

No. Entitlement depends on contract terms.

Severance

Payable to redundant employees with 2 years’ seniority only: 1/2 week’s pay per year of service, for service under
age 22; 1 week’s pay per year of service, for service aged 22 to 40; and 1.5 week’s pay per year of service, for service age 41 and above. Pay capped at GBP538 per week. The rate will increase in April 2021. More generous terms are possible.

**POST-TERMINATION RESTRAINTS**

Considered to be in restraint of trade and void. However, those that protect the employer's legitimate business interests may be enforced if reasonable. Must be tailored for the specific business and the risks posed by the employee. Garden leave is common for senior employees.

**Non-competes**

Permissible in narrow, justifiable circumstances. Typically no longer than 3 to 6 (maximum of 12) months, depending on the circumstances.

**Customer non-solicits**

Permissible in specific circumstances. Typically no longer than 3 to 6 (maximum of 12) months, depending on the circumstances.

**Employee non-solicits**

Permissible. Length of restriction will depend on the circumstances.

**WAIVERS**

Enforceable, but employees must be represented by counsel to sign a settlement agreement waiving statutory rights. Note that a waiver of contractual and common law rights is possible without formalities.

**REMEDIES**

**Discrimination**

Uncapped compensation, based on the claimant’s financial loss plus injury-to-feelings compensation of between GBP600 and 33,000.

It is additionally possible to claim a declaration of rights or a recommendation, aimed at reducing the impact of discrimination.

**Unfair dismissal**

Basic award, based on claimant’s age and length of service (currently capped at GBP16,140) plus compensation based on the claimant’s financial loss (currently capped at GBP88,519) or 52 weeks' pay – whichever is lower). The cap is expected to increase in April 2021. In exceptional cases (e.g., whistleblowing dismissals), compensation is uncapped.

Reinstatement or reengagement is possible but rare.
As of April 5, 2014, it is possible for the tribunal to award a payment for "aggravating features" of between GBP100 and GBP5,000. This is paid to the government. In April 2019, the maximum level of penalty that tribunals may impose for aggravated breaches rose to GBP20,000.

Failure to inform & consult

Redundancy: up to 90 days' gross pay. TUPE: up to 13 weeks' gross pay.

CRIMINAL SANCTIONS

Failure to notify the Secretary of State about mass layoffs is a criminal offense. Prosecution is fairly rare, but there has been an upward trend in prosecutions in recent years. Otherwise, criminal sanctions are not generally a concern.

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UNITED STATES

LEGAL SYSTEM, CURRENCY, LANGUAGE

Combination of federal statutory law, state statutory and common law, and local statutory law. Regulations vary significantly from state to state. The official currency is the US dollar (USD). The official language is English.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity may engage employees to do business in the US, subject to certain business and tax considerations and registration, as an entity qualified to do business in any state where it has employees and/or is engaged in business. All US employers are required to obtain a federal Employer Identification Number (EIN) to pay applicable payroll taxes and withhold certain tax contributions from their employees. Employers may be required to register employees with the specific state in which they are employed – regulations vary from state to state. Certain states (eg, California) have requirements regarding what information must be provided to employees with their pay, including itemized deductions and reports of hours worked, among other information.

PRE-HIRE CHECKS

Required

None, except in certain regulated industries which may require fingerprinting, background checks, motor vehicle histories and/or drug or alcohol screening.

Permissible

Laws vary from state to state. Reference and education checks are common. Criminal background and credit checks generally may be performed in accordance with applicable federal, state and local law, with an increasing number of state and local jurisdictions limiting criminal history questions on applications and permitting such checks only following a conditional job offer. Medical examinations and drug and alcohol screening are generally permissible if conducted post-offer and in accordance with applicable law; however, as more states legalize recreational marijuana use, the laws are becoming more difficult to navigate. Some states and localities prohibit
employers from screening new hires for marijuana or refusing to hire applicants based on a failed pre-employment marijuana screen (with exceptions for certain positions such as safety-sensitive jobs) or require employers to take certain steps before rescinding a conditional job offer.

**IMMIGRATION**

All employees must be legally authorized to work in the US, whether by citizenship, permanent residence (ie, green card) status or a valid visa, which often requires sponsorship by the employer. Within 3 days of the start of employment, all employees must submit materials establishing such authorization and complete a Form I-9.

Employers operating in certain industries (eg, government contractors) and in certain states may be required to use the federal E-Verify system for work authorization confirmation, though some states prohibit or limit use of E-Verify.

**HIRING OPTIONS**

**Employee**

Employers may elect various hiring options – at-will, fixed-term, full-time or part-time, temporary or seasonal. Generally, the nature of the employment relationship is at will, meaning either the employer or the employee may terminate the relationship at any time, with or without notice and with or without cause, as long as the reason for termination is not discriminatory or retaliatory and does not otherwise violate the law. Many states recognize exceptions to the at-will employment doctrine due to public policy, implied contracts, the covenant of good faith and fraud or misrepresentation. Certain jurisdictions have either superseded the general rule of at-will employment by statute (eg, Montana) or have adopted a statutory severance scheme for terminations without cause (eg, Puerto Rico). States may also have industry-specific legislation. For example, in 2021, New York City enacted first-of-its-kind legislation that prohibits fast food employers from discharging or substantially reducing an employees’ hours without “just cause” outside of a probation period.

**Independent contractor**

Independent contractors may be engaged directly as individuals or through an entity (eg, LLC or LP). Contractors must be truly independent and not be closely directed by the principal. There are multiple tests utilized that consider various factors on both the federal and state level to determine whether an individual is properly classified as an independent contractor. By way of example, if an individual is engaged through a separate business entity, is not performing work that is a part of the company’s core business, performs the same or similar services for other entities and is engaged for a short-term assignment or project, the individual will likely be deemed properly classified and engaged as an independent contractor. Employers should utilize agreements with independent contractors to document the relationship.

Evolving agency decisions and views – namely from the Department of Labor (DOL) and National Labor Relations Board (NLRB) – have complicated the compliance landscape. In 2021, the DOL delayed and later rescinded a Trump-era rule that would have made it easier for companies to classify workers as independent contractors – actions which are being challenged in federal court. The DOL also has ramped up enforcement efforts to combat misclassification. Meanwhile, the NLRB is reexamining the legal test for determining whether a worker is an employee protected by federal labor law. At the state level, certain states’ legislation and case law are becoming
more employee and contractor friendly (e.g., California), with several states recently enacting new laws targeting independent contractor misclassification.

Agency worker

Employees may provide services through an employment agency or professional employer organization (PEO). The company and the agency may be deemed "joint employers" and be held jointly liable under various federal and state employment laws. Which entity is financially responsible for any such liabilities may depend on the terms of the agreement with the employment agency or PEO.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

Given the at-will employment concept that exists across the US, most employees do not have any employment agreements, written or otherwise.

However, executives and high-level managers tend to have written employment agreements that address items such as duties, compensation, restrictive covenants and any post-termination severance obligations.

Contracts are not required and, if used, are not required to have any specific terms.

Probationary periods

Permissible, but unnecessary in a typical at-will relationship, unless something about the terms or conditions of employment – such as right to accrue vacation or participate in group health benefits – will change following the expiration of the probationary period.

Policies

Policies vary from state to state. Employers are required to post notices about employee rights under various federal, state and local laws. It is highly recommend to include anti-harassment, discrimination and retaliation policies in an employee handbook which may help in the defense against related claims. Certain government contractors are required to implement affirmative action plans. Most employers have employees sign an acknowledgment of the at-will employment policy.

Third-party approval

If the workforce is represented by a union or other labor organization, changes to policies that affect terms and conditions of employment may need to be submitted to the union or other labor organization for negotiation prior to implementation.

LANGUAGE REQUIREMENTS

Certain documents and notices are required to be posted or provided in the language known to be the primary
language of a certain percentage of the workforce or of specific employees, if other than English. "English-only" policies in the workplace may be subject to legal challenge as discriminatory, unless there is legitimate business purpose for the rule.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

Most employers are covered by the Fair Labor Standards Act (FLSA) which guarantees minimum wage and overtime pay for non-exempt employees. The most common exemptions are for executive, administrative, professional, outside sales or computer professional employees. To qualify for an exemption, an employee must be paid a fixed salary of at least USD684 per week (USD35,568 annually) and must meet the applicable "duties" test for the exemption at issue. Some states impose additional wage and hour requirements above the FLSA requirements (eg, Oregon and New York); where state laws are more favorable to employees, the state law requirements will apply.

Working hours

There is no federal limit on the number of hours per day or per week that an employee over the age of 16 can work, although there are overtime pay requirements, as discussed below. There are restrictions on child labor and in certain professions (eg, airline pilots and drivers), and hours may be limited by a collective bargaining agreement with a labor union. In some states, certain employers are required to give their workers 1 day off each week under so-called "day of rest" laws or are required to pay workers at a premium rate for such work time. In addition, some states and localities have enacted predictive scheduling laws; while these vary in scope, the laws may regulate hours, notice of work schedules and predictability pay for schedule changes and on-call shifts.

Overtime

Generally, non-exempt employees must be paid 1.5 times their regular rate of pay for all hours worked in excess of 40 hours per week under the federal FLSA. Overtime must be calculated on a weekly basis and cannot be "averaged" over a period of 2 or more weeks. In some states, such as California, additional overtime is required in certain circumstances (eg, more than 8 hours per day).

Wages

All non-exempt employees must be paid at least the federal minimum wage, which presently is USD7.25 per hour. On November 24, 2021, the US DOL published a final rule increasing the hourly minimum wage to $15 for federal contractor workers beginning January 30, 2022. Some states and cities have higher minimum wage requirements – in many cases, above USD10 per hour – and additional states and localities have passed or have pending legislation that will raise the minimum wage in the coming years. This includes California (ranging from USD13 to USD14 per hour, with scheduled annual increases up to USD15 per hour by 2022 or 2023, depending on the size of the employer) and New York (ranging from USD13.20 to USD15 per hour).

Vacation

There is no federal statutory requirement for private sector employers to provide paid vacation or holiday to any employees. In practice, most employers adopt a vacation or paid time off policy. Once such a policy is adopted, many states will treat accrued vacation or paid time off as wages that cannot be withheld or taken away. A few
states (eg, Massachusetts, Rhode Island) control hours of operation and require certain businesses to pay extra compensation on some legal holidays.

Sick leave & pay

There is no federally mandated right to paid sick leave. Employers with 50 or more workers generally must provide eligible employees unpaid leave under the Family and Medical Leave Act (FMLA) for up to 12 weeks in any given year due to a serious health condition of the employee or their family members, or for a qualifying exigency arising out of the fact that a family member is a covered military member or on covered active duty, and for up to 26 weeks to care for a family member who is a covered military member. Employers also may be required to provide unpaid leave (for at least some period of time) as a reasonable accommodation to a qualified employee with a disability under the Americans with Disabilities Act (ADA). State law may provide for additional leave, with an increasing number of states offering paid leave in connection with the birth or adoption of a child, typically with such benefits paid by the state, up to a percentage of the employee’s regular wages.

In the absence of national legislation providing for paid sick leave, many states, cities and counties have enacted laws requiring certain private employers to provide some form of paid sick leave to eligible employees. The result has been a patchwork of laws with different requirements.

As a result of COVID-19, federal, state and local governments also enacted legislation to create rights to emergency sick leave benefits. While federal Family First Coronavirus Response Act (FFCRA) leave requirements expired in 2020, some state and local emergency leave laws remain in effect. Some state and local governments have also mandated leave for COVID-19 vaccination.

Going forward, the crisis may spur lawmakers and employers to consider more permanent changes. A number of states enacted new leave laws in 2021, including California, Illinois, New York, Oregon, and the District of Columbia, with more changes expected in 2022.

Maternity/parental leave & pay

There is no federally mandated right to paid maternity or parental leave. Under the FMLA, employers with 50 or more workers generally must provide eligible employees unpaid leave for the birth or adoption of a child, or to care for a newborn or a newly placed child, for up to 12 weeks in any given year. Certain states and local jurisdictions have more generous leave requirements, and an increasing number provide paid parental leave, typically paid by the state, covering a certain portion of the worker’s wages. In certain states, employees who are temporarily disabled for medical reasons, including pregnancy and childbirth, are eligible to receive partial wage replacement in the form of temporary disability insurance benefits, and employers may be required to enroll in state-provided or state-sponsored insurance plans to cover the payments (eg, in New York) or contributions may be deducted from employees’ paychecks (eg, in California).

DISCRIMINATION

Federal law generally protects employees from discrimination, harassment or retaliation based on race, color, religion, sex (including transgender identities and sexual orientation), national origin – Title VII of the Civil Rights Act (Title VII), age (40 and over) – Age Discrimination in Employment Act (ADEA), disability – Americans with
Disabilities Act (ADA) and genetic information – Genetic Information Nondiscrimination Act (GINA). State and local protected categories vary and are often broader (eg, creed, marital status, domestic partnership status, military status, domestic violence victim status, arrest record, conviction record, alienage, citizenship status, unemployment status, political beliefs and party affiliation). In 2021, various states and localities enacted new protections related to pregnancy, breastfeeding, disabilities, and physical characteristics historically associated with race (eg, hair texture and hairstyles).

In June 2020, the US Supreme Court held in Bostock v. Clayton County, Georgia that an employer who fires an individual merely for being gay or transgender violates Title VII’s ban on employment discrimination based on sex. In the wake of the Court’s decision, states continue to amend discrimination laws to include gender identity, gender expression, and sexual orientation as protected classes.

States and localities continue to take the lead on legislation addressing workplace discrimination, harassment and retaliation in the wake of the #MeToo movement, strengthening protections for women and against sexual and gender harassment. For example, state or local laws may:

- Adopt a lower standard for proving harassment
- Mandate sexual harassment training
- Expand the scope of existing laws to cover smaller employers or non-employees such as interns, independent contractors and freelancers
- Extend the time for an employee to file an administrative complaint or lawsuit
- Require reporting of adverse judgments and administrative rulings
- Limit or prohibit nondisclosure, non-disparagement or no-rehire provisions in certain settlements or employment agreements
- Allow for voidable “golden parachute” provisions for management employees or
- Limit or ban the use of mandatory arbitration for certain claims, although some of these laws are being challenged.

States and localities also continue to enact laws to address equal pay issues. For example, laws may ban salary history inquiries, prohibit retaliation against an employee for discussing wages or compensation with another employee, require pay data reporting or mandate certain job posting and compensation disclosures.

**BENEFITS & PENSIONS**

The Affordable Care Act (ACA or Obamacare) requires certain employers to provide insurance for their employees or pay a penalty. By state law, employers generally must maintain workers’ compensation insurance for on-the-job injuries and unemployment insurance to provide benefits to former employees in the event of a qualified involuntary termination of employment. No retirement benefits or pensions are required unless included in a written agreement (eg, a collective bargaining agreement with a labor union), but, where provided, their administration is governed by federal law.
DATA PRIVACY

Certain states restrict the use of employees’ social security numbers for any identifying purposes. Medical information must be maintained separately from personnel files and kept confidential. Otherwise, employers generally are entitled to monitor or search corporate emails of their employees and internet traffic accessed by their computer systems, on the premise that employees do not have an expectation of privacy in the use of their employer’s computer systems or corporate emails, especially with a policy that says so. Jurisdictions vary as to an employer’s ability to search or monitor personal email addresses and websites accessed from an employer’s computer or premises.

State laws may provide for additional individual data rights, including data breach notifications, or obligations on businesses processing personal data.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

None, except if it results in a plant closing or mass layoff, in which case employees are generally entitled to at least 60 days’ notice, if feasible (see “Mass layoff rules” below). In an asset sale, employees may be transferred through termination and rehire.

EMPLOYEE REPRESENTATION

Trade unions are common in certain sectors. The US private sector had a unionization rate of 6.3 percent in 2020, compared to 6.2 percent in 2019. Employees’ rights to organize and engage in “concerted activity” regarding their terms and conditions of employment are protected under the National Labor Relations Act (NLRA), whether or not they belong to a union or work in a unionized workplace.

TERMINATION

Grounds

In almost all states, absent a contract or union agreement to the contrary, an employer may terminate an employee for any non-discriminatory, non-retaliatory reason, at any time, with or without notice, and with or without cause.

Employees subject to termination laws

Generally, all employees are protected by some laws prohibiting termination for certain reasons (e.g., discrimination or retaliation). Employees who are parties to a collective bargaining agreement or have a written employment agreement may have greater protections, as dictated by their contracts.

Restricted or prohibited terminations

Employers cannot terminate employees based on any protected category, in retaliation for a complaint of discrimination or harassment based on any protected category or for engaging in protected whistleblowing
activity. Greater protection may be afforded by state or local laws, collective bargaining agreements or individual contracts.

**Third-party approval for termination/termination documents**

Not applicable for this jurisdiction.

**Mass layoff rules**

Under the Worker Adjustment and Retraining Notification (WARN) Act, employers with more than 100 employees generally must provide 60 days' notice to affected employees and certain government agencies of a plant closing or mass layoff that surpasses certain thresholds of employees affected. Some states have "mini-WARN" acts with more far-reaching requirements (ie, applicable to employers with fewer employees, are triggered at lower thresholds and/or provide for longer notice periods).

**Notice**

Generally, no advance notice is required for a termination of employment, unless otherwise required by contract or the termination involves a triggering event under the WARN Act or a state equivalent "mini-WARN" act (see above). Certain states (eg, Georgia) may require that the terminated employee be provided a written notice related to the separation.

**Statutory right to pay in lieu of notice or garden leave**

Payment in lieu of notice is permitted even if there is no contractual right to make such a payment. It is not common for an employee to be placed on garden leave.

**Severance**

Severance pay is often granted to employees upon termination of employment; however, other than as provided by contract or in an employer's severance plan or policy, there is generally no statutory right to severance pay under federal or state law, except in Puerto Rico. Certain states may require employers to offer severance in the event of a facility closing or mass dismissal.

**POST-TERMINATION RESTRAINTS**

Permissible restraints are generally governed by state law (statutory and common law) and vary significantly from state to state. In most states, post-employment restrictions that are reasonably necessary to protect employer's legitimate business interests are enforced.

**Non-competes**

Enforcement of non-competes varies from state to state, and states and localities continue to place limits on non-competes. Where they are permitted, restrictions lasting from 6 months to 1 year are generally deemed reasonable, and restrictions lasting more than 2 years are generally considered unreasonable (except in connection with the sale of a business). Some states and localities prohibit or otherwise strictly limit non-competes in the employment context by statute, except in certain circumstances (eg, sale of a business).
Customer non-solicits

Enforcement of customer non-solicits varies from state to state. They are generally permissible if the employee was involved with a customer and the employer aided in developing the relationship or if the employee obtained confidential information from or about the customer. Customer non-solicits are treated similarly to non-competes in most states, including that they are generally prohibited in California.

Employee non-solicits

Enforcement of employee non-solicits varies from state to state. They are generally permissible, except in California.

WAIVERS

Waivers of certain rights are generally enforceable in exchange for valuable consideration, though their enforceability and permitted scope vary from state to state. Waivers of certain statutory rights (such as federal age discrimination claims under the ADEA) are only valid if they meet specific statutory requirements (eg, for a waiver of ADEA claims, they must include certain acknowledgements and a specific consideration and revocation period).

There are certain claims that generally cannot be waived as a matter of law, including workers’ compensation claims, unemployment claims and the right to file or participate in certain administrative claims (eg, a charge of discrimination filed with the EEOC). Additionally, per the US Securities and Exchange Commission (SEC), an employer cannot require an employee to waive their right to participate in a monetary recovery in connection with a whistleblower claim brought before the SEC.

REMEDIES

Discrimination

Damages for discrimination vary depending on statute and jurisdiction. Federal caps exist for certain claims. Other claims, including most state law claims, allow for unlimited compensatory damages, including front pay, back pay, emotional distress and attorneys’ fees. Many claims allow for the recovery of punitive damages.

Unfair dismissal

Because almost all states follow the at-will employment doctrine, claims for unfair dismissal are generally disfavored, unless it constitutes a discriminatory or retaliatory dismissal or a termination in violation of public policy.

Failure to inform & consult

Similarly, because almost all states follow the at-will employment doctrine, a claim for failure to inform and consult generally does not exist, unless it constitutes a discriminatory or retaliatory dismissal, or a dismissal covered by the WARN Act or its state equivalent.

CRIMINAL SANCTIONS
Employers may be criminally liable for certain violations of federal and state employment laws such as wage and hour and health and safety laws. For example, California Division of Occupational Safety and Health (Cal/OSHA) violations can carry criminal penalties – not only against employers, but also against managers and supervisors. A new California law effective January 1, 2022 will make intentional wage theft punishable as grand theft. In limited circumstances, employers may be vicariously liable for the criminal acts of their employees. Employers may be liable for monetary statutory penalties (such as double or treble damages) for violations of wage and hour and other laws.

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LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. The official currency is the Bolivar (VES). The official languages are Spanish and local native languages.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Employers must set up a registered entity in Venezuela and complete mandatory social security and labor registrations in order to hire employees. Social security registrations include registration with social security (IVSS), the housing fund (BANAVIH) and the job training institute (INCES). Employers must also register with the Employer Register Office (RNET), Health and Safety Institute (INPSASEL) and the Council of Individuals with Disability (CONAPDIS).

PRE-HIRE CHECKS

Required

None. However, foreign employees are required to have a labor (TR-L) visa in order to work in Venezuela. Therefore, an immigration check is recommended.

Permissible

Employers are entitled to use any information about an applicant that is in the public domain, including information available on social media, for verification purposes. Employers may also conduct background checks covering a candidate’s education, family and other information at any stage of the hiring process. This includes asking candidates directly for references or contacting previous employers to check references. Information collected must be relevant to the position being applied for.

Employers should avoid collection of information that may be considered offensive or discriminatory. Protected characteristics from discrimination include sex, race, religion, marital status, pregnancy, political beliefs, sexual preferences, social class, union affiliation, physical disability or criminal background.

Specifically, requiring criminal records or a criminal background certificate from candidates and requiring female applicants to undergo medical tests to determine pregnancy are prohibited. HIV testing is permissible when the
position applied for involves matters of public health.

**IMMIGRATION**

There is a cap of 10 percent of the total payroll on hiring foreign employees in companies with more than 10 employees. The salaries of foreign employees must not exceed 20 percent of the total amount paid by the company to local employees.

Foreign nationals who work in Venezuela require a work (TR-L) visa which is granted for 1 year and allows multiple entries. The TR-L visa is renewable for additional 1-year terms. The local entity and foreign employee must sign an employment contract as part of the documents required by the local authorities to issue a work (TR-L) visa.

**HIRING OPTIONS**

**Employee**

Employees may be hired under indefinite or fixed-term contracts and on a part-time or shift worker basis.

Fixed-term employment contracts are restricted and may only be entered into when (a) the nature of the services requires, (b) an employee is provisionally replaced by another employee, (c) a Venezuelan employee is temporarily sent abroad to perform services and needs to be replaced, and (d) when an employee is required to complete a specific work or project. Fixed-term employment contracts may only be renewed once. If the employee continues to work after the expiration date or if it is renewed for a second time, then the employment contract becomes indefinite. However, fixed-term employment contracts used in the construction sector may be renewed without limit.

**Independent contractor**

Independent contractors perform services under a civil or commercial relationship, characterized by non-exclusiveness of services, absence of employer control, direction and supervising powers, and use of its own resources and personnel to provide services, among others. Independent contractor agreements are not covered by the statutory protections afforded in the Venezuelan labor law.

The Venezuelan labor law presumes an employment relationship where an individual personally provides services and receives remuneration for such services and the company receiving the services has control and direction over the way the services are executed.

**Agency worker**

Hiring workers through intermediaries such as temporary work agencies is restricted. Agency workers are entitled to receive the same pay and must be granted equal working conditions as those of the company where they are assigned. In these types of arrangements, the contracting company may be held vicariously liable for any labor obligations towards the temporary agency worker. Such arrangements may not be used to evade or circumvent labor obligations.
EMPLOYMENT CONTRACTS & POLICIES

Requirements

No requirement for employers to enter into a written employment contract, but doing so is advisable as the law presumes that the provisions of a verbal agreement are those alleged by the employee.

When putting the agreement in writing, the parties must sign 2 originals: 1 for the employee and 1 for the employer. The contract must include the following information:

- Employee’s name, nationality, address, domicile, marital status and Venezuelan Identification
- If the employer is a legal entity, corporate name, and the domicile and name of its representative
- A description of the scope of work and place of work, the start date of the employment relationship and the type of employment contract
- The length and distribution of daily working hours and the agreed remuneration
- Reference to collective bargaining agreements, if applicable, and
- The duration of the employment contract.

A copy of the signed employment contract must be provided to the employee. The employer must keep a record (ie, book) of the time and date when the employment contract was signed.

Probationary periods

Probationary periods are used by employers to test the suitability of an employee for a job and by the employee to assess working conditions. Probationary periods may only be used for indefinite-term contracts, for a maximum of 1 month. During the probationary period, both the employee and employer may terminate the employment relationship without notice.

Policies

Employers may implement internal policies, guidelines and rules. They are contractually binding and must be issued in Spanish. Best practice is to notify employees of such policies and have them sign an acknowledgement of receipt.

All employers must have a health and safety program in place which must be executed in coordination with the entity’s health and safety representatives.

Third-party approval

The health and safety program must be approved by the health and safety authority (INPSASEL). No additional third-party approvals are needed.

LANGUAGE REQUIREMENTS
Employment contracts and all other work-related manuals, policies, guidelines and regulations must be in Spanish. In exceptional cases as required, these documents may be drafted in local native languages which are acknowledged as official languages under the labor law.

**MINIMUM EMPLOYMENT RIGHTS**

Employees entitled to minimum employment rights

All employees, whether local or foreign.

**Working hours**

The working week consists of 5 days. Employees are entitled to 2 continuous rest days per week.

The limits on daily and weekly hours differ depending on whether the shift is a regular daytime shift, a regular nighttime shift or a mixed shift.

- On a regular daytime shift, work is performed between 5:00am and 5:00pm. This shift cannot exceed 8 hours per day and 40 hours per week.

- A regular nighttime shift consists of any work scheduled between 7:00pm and 5:00am. It cannot exceed 7 hours per day and 35 hours per week. Nighttime shift hours must be paid at least 30 percent above the rate applicable to daytime shifts.

- Mixed-shift work is performed during both daytime and nighttime shifts, but a mixed shift of more than 4 hours during a nighttime shift is regarded as a nighttime shift. A mixed shift employee cannot work more than 7.5 hours per day and 37.5 hours per week.

Employees are entitled to a daily break of at least 1 hour during their shift and cannot work more than 5 consecutive hours. If the employee must remain at their workstation during the break, at least half of the break will be deemed as time worked.

Employers with continuous operations that involve multiple shifts may exceed the daily and weekly limits. However, the hours worked in a reference period of 8 weeks may not exceed an average of 42 hours per week. A 6-day working week must be compensated with an additional day of vacation per 6-day week, to be added to the employee’s annual vacation entitlement.

The following employees are exempt from the general rules about working time:

- Employees holding managerial or top-level positions

- Employees with monitoring, surveillance and inspection duties that do not require prolonged efforts and

- Employees with on-duty waiting time periods (eg, employees who are meant to relieve another employee where needed), or employees with intermittent or discontinued activities, that involve long periods of inactivity, but must remain on call at their posting.

Although the general working time rules do not apply to these cases, they must observe a limit of 11 hours per
Overtime

Overtime work (ie, any work performed in excess of the regular working shift) may only be done if authorized by the Labor Ministry. If, as a result of unforeseen and urgent circumstances, the employer cannot request authorization for overtime work, it must notify the Labor Ministry the day after the overtime was performed and must provide evidence of the reasons for the overtime.

Working shifts including overtime cannot exceed 10 hours per day. Employees cannot work more than 10 overtime hours per week and more than 100 overtime hours per year.

The employer must keep a register of overtime hours concerning who worked overtime, the specific tasks carried out during such time and what compensation was paid for overtime work.

Wages

The Venezuelan president sets the minimum statutory wage paid to employees. The minimum wage is adjusted periodically. The latest minimum monthly statutory wage published in the local official gazette was set at VES7 (equivalent to approximately USD1.54 at the official exchange rate in force as of January 31, 2022).

Vacation

Employees are entitled to receive 15 working days of paid vacation if they have worked for more than 1 year, plus 1 additional working day for each additional year of employment up to a maximum leave period of 30 working days per year.

Additionally, employees receive a vacation bonus equal to 15 days of salary after 1 year of employment, plus 1 additional day of salary per additional year of employment up to a maximum vacation bonus equal to 30 days of salary per year. Such bonus must be paid to the employee at the time the employee takes their vacation. The employer must keep a registry of vacation days for all its employees.

Employers are required to ensure that their employees effectively take their vacation every year. Vacation may be accrued for up to 2 years.

Sick leave & pay

Employees may take leaves for sickness or labor-related incapacity for up to 52 weeks. In order to claim sick pay, employees are required to provide a medical certification, as issued by the Venezuelan Social Security Institute.

During the first 3 days of sick leave, the employer must pay the employee’s full salary. Thereafter, the employer must pay 33 percent of the employee’s salary, and the remaining 66 percent will be paid by the Venezuelan Social Security Institute. Some employers pay the employee’s full salary during sick leave, as payments by the Social Security Institute are often severely delayed.

Maternity/parental leave & pay

Employers must grant maternity leave of 6 weeks before birth and 20 weeks after birth. Employees on maternity leave are entitled to receive 33 percent of their salary from the employer with the remaining 66 percent paid by
the Venezuelan Social Security Institute, for the entire duration of leave.

Adoption leave of 26 weeks is available if a child is adopted at the age of 3 years or younger. The Venezuelan Social Security Institute pays the employee a portion of the employee’s salary (66 percent) during this period, and the remainder (33 percent) is paid by the employer.

Employees are entitled to 14 days’ paternity leave. The Venezuelan Social Security Institute pays the employee’s full salary during this period.

**DISCRIMINATION**

Employers must refrain from any distinctions, exclusions, preferences or restrictions in job access and employment based on sex, race, religion, marital status, pregnancy, political beliefs, sexual preferences, social class, union affiliation, physical disability and criminal background.

Different treatment is not considered discriminatory if it is based on an objective and reasonable purpose. The Supreme Court has identified 4 conditions under which differential treatment is not considered discriminatory:

- It has a specific purpose.
- It has a reasonable aim (i.e., it is compatible with constitutional rights and principles).
- It has a proportionate effect in relation to the circumstances and the aim achieved.
- It is applied to all cases of the same kind.

For example, different pay based on seniority, family burdens or qualifications would not constitute discrimination under these criteria.

In addition, there are cases of positive discrimination provided by law—for example, disability quotas and foreign labor quotas.

**BENEFITS & PENSIONS**

Benefits: There are certain statutory benefits that all employees must receive, such as:

- Profit sharing (*utilidades*): Employers must distribute among its employees at least 15 percent of the employer’s net profits before taxes, obtained at the end of the fiscal year, with a minimum of 30 days of salary and a maximum of 120 days of salary.

- Food benefit: Employees are entitled to receive a monthly food benefit (*Cestaticket Socialista*) of VES3 (equivalent to approximately USD0.60 at the official exchange rate in force as of January 31, 2022).

- Severance payments (*prestaciones sociales*): Employees are entitled to severance payment upon termination of employment, regardless of the cause for termination (see “Severance” below).
Pension: Employees are entitled to receive a lifelong state pension if they meet the following qualifying conditions:

(i) they have reached the retirement age (60 years old for men and 55 for women) and (ii) they have contributed at least 750 weeks. Employees may choose to continue working beyond the retirement age.

The pension benefit is currently set at VES7 per month (equivalent to approximately USD1.54 at the official exchange rate in force as of January 31, 2022).

It is not mandatory for employers to provide a pension scheme, but they are required to enroll employees into the Social Security System and make monthly contributions that may range from 9 percent to 11 percent of the employee’s regular salary depending on the company’s activity and risk profile.

DATA PRIVACY

Although there is no specific regulation regarding data privacy, employers have a general duty to uphold employees’ right to privacy and must observe the data protection principles determined by the Supreme Court (DP Principles).

The DP Principles apply to systems, registers or compilations of data that allow the creation of a complete or partial profile of an individual forming part of such system, register or compilation (in this case, an employee, for example). There is no clear outline of what a “complete or partial profile” involves.

This means that, in general, employee consent is required to process personal data. Venezuelan case law does not draw a distinction between forms of personal data. Therefore, there are no separate standards for the protection of sensitive data.

Pursuant to the DP Principles, employers must (i) inform the employee what data has been collected, (ii) inform the employee of the purpose(s) of the collection of their personal data, (iii) inform the employee who will be the final users of the data (ie, whether any third parties will have access to the data) and (iv) allow the employee to correct any erroneous data or delete any data that may be incomplete, inadequate or excessive in relation to the purpose(s) for which they were gathered (and this must be communicated to any third party who has been given access to the personal data).

Venezuelan law also provides for the protection of private communications, and employers have a strict obligation to keep employee health information and records confidential.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

When a business is acquired because of a share or stock purchase, there is no change to the identity of the employer under Venezuelan labor law. The buyer steps into the shoes of the seller and assumes all contractual and statutory rights and liabilities owed by or to its employees.

In contrast, where an asset purchase amounts to the transfer of a business (or part of a business), there is a change of employer, and the following rules apply:

- All rights and duties of the transferor stemming from the employment contract as it exists at the date of the transfer must be transferred to the transferee.
The change of employer must be notified to the employee, the employees’ union and the Labor Inspector.

The old and new employer are jointly and severally liable for all employees’ vested rights at the time of the transfer, for up to 5 years from the effective transfer date.

Employees who do not consent to the change of employer may resign with cause within 3 months from the date of the transfer and are entitled to severance payments equal to the amount they would have received in the event of dismissal without cause.

EMPLOYEE REPRESENTATION

Workers and employers are entitled to organize and incorporate unions. A minimum of 20 workers is required to form a union. There are 2 basic types of unions under Venezuelan labor laws: companywide unions that organize workers of a single company, and industrywide unions that organize workers in an entire industry regardless of the company that they belong to and the position they hold.

Under certain conditions, the workers may exercise their right to negotiate collective bargaining agreements and to resort to collective action, including strikes.

All employers, regardless of number of employees, are also required to set up a workers’ council and a health and safety committee.

Work councils: Workers must elect between 3 and 7 employees to form the workers’ council. Among those members, the workers’ council must include a female, an individual aged 15 to 35 and a member of the national militia. Workers’ councils oversee the employer’s production process, including distribution and supply. They do not have decision-making powers, but they can propose that the employer adopt measures to enhance its productive process. There are no consultation obligations from the employer associated to workers’ councils either.

Health and safety committee: Workers and employers must set up a health and safety committee with representatives from both sides. The number of health and safety representatives is set by law and depends on the company’s headcount. The health and safety committee has various tasks including monitoring health and safety conditions at the workplace and preparing and approving the company’s health and safety program.

TERMINATION

Grounds

An employer may terminate an employee “with cause” based on the following grounds (within the restrictions indicated below, see “Bar against dismissal”):

• Dishonest, immoral or aggressive behavior.

• Offense or disrespect to the employer, the employer’s representatives or family.

• Intentional or negligent behavior that may affect health and safety at work.
• Omissions or imprudence that seriously affects health and safety at work.

• Failure to attend work for 3 days within a month, without cause.

• Causing damage (with intent or negligence) to machinery, tools, furniture, raw materials or finished or unfinished products.

• Disclosure of industrial or trade secrets.

• Serious breach of labor-related obligations.

• Abandonment of work, including the sudden and unjustified exit from the workplace without permission; refusal to perform duties that are part of the job of the employee, unless the duties represent an imminent and grave danger to the life or health of the employee; and unjustified absence of the employee in charge of machinery or an activity that could disrupt other activities of the business.

Job Stability

All employees, except for top-level and management, are entitled to job stability, which means they cannot be dismissed without cause.

If an employer intends to terminate an employee “for cause,” it must notify the competent labor courts and indicate the grounds for dismissal with 5 working days from termination. If the employer fails to notify the courts, the dismissal will be considered “without cause”.

Employees may challenge the dismissal with the courts but lose the right to re-instatement if they do not oppose the dismissal within 10 days of the termination of employment.

In addition, the following employees are afforded special protections against dismissal, meaning they can only be dismissed with cause and prior authorization from the Labor Inspectorate:

• Pregnant women, from the beginning of the pregnancy, up to 2 years after birth

• Fathers, from the beginning of the pregnancy, for up to 2 years after birth

• Parents adopting children under the age of 3, for up to 2 years from the adoption

• Parents of a disabled or sick child

• Employees during suspension of the labor relationship

• Employees outsourced through unlawful outsourcing arrangements

• Trade union representatives and

• Health and safety representatives.
Employers should consider, however, that this protection and procedure is temporally superseded by the current general bar against dismissal that is in place (see “Bar against dismissal”).

Bar against dismissal

There is currently a general bar against dismissal or labor freeze in Venezuela which prevents employers from terminating employees on indefinite-term contracts without cause and without obtaining prior authorization from the Labor Ministry. The labor freeze applies to all employees except those holding top-level management positions and seasonal or temporary employees.

Only in the most extreme cases of misconduct or insubordination does the Labor Ministry grant authorization for dismissal. Therefore, employers tend to seek mutual agreement with employees to terminate the labor relationship.

Although labor freezes are intended to be temporary, the president has been extending them continuously since April 2002. The last extension was ordered by Executive Decree No. 4,414 published in the Official Gazette No. 6,611 of December 21, 2020. It has a duration of 2 years, until December 31, 2022.

Third-party approval for termination

See above, under “Bar against dismissal.”

Mass layoff rules

Mass layoffs occur when dismissals take place within a 3-month period, in the following numbers:

- At least 10 percent of employees in companies with more than 100 employees.
- 20 percent of employees in companies with more than 50 employees.
- 10 employees in companies with less than 50 employees.

When a mass layoff takes place, the Labor Ministry has the authority to suspend collective redundancies to ensure employment. Mass layoffs requirements do not apply to job reductions that are the result of voluntary departures of employees following enhanced termination offers. The requirements only apply to job reductions that are implemented unilaterally by employers.

Employers must initiate an administrative procedure for termination of its workforce before the Labor Ministry. The petition must set forth the economic or technical reasons that underpin the termination of workforce and provide certain supporting documentation. Once the petition is filed, a negotiation committee is set up. The negotiation committee is composed of 1 representative appointed by the workers’ union, 1 representative appointed by the employer and the labor inspector who chairs the committee and acts as a mediator. The negotiation committee may seek an agreement on the number of workers to be terminated, the timeframe for such terminations and the termination payments that will be provided to departing workers. Instead of the workforce termination, the negotiation committee may agree on alternative measures that avoid the job cuts.

This procedure is rarely used in Venezuela and most terminations are the result of a negotiation process with no government involvement.
Notice

N/A. None required.

Statutory right to pay in lieu of notice or garden leave

N/A

Severance

Employees are entitled to severance payments upon termination of employment regardless of the reason for termination. To ensure payment, employers must make quarterly deposits throughout the employment relationship equivalent to 15 days of pay, into a bank trust or by means of its accounting. This amounts to 60 days of pay per year, based on the salary earned at the time of each deposit, plus 2 additional days per year of seniority, up to 90 days in total.

The accumulated severance deposited or accrued generates interest at a special rate determined by the Venezuelan Central Bank for severance. This must be deposited or accrued on a yearly basis. If requested by the employee, the interest must be paid annually to the employee.

Upon termination, the employee is entitled to receive, whichever amount is greater, (i) the total amount deposited or (ii) the equivalent of 1 month’s salary at the time of termination multiplied by the number of years worked.

The salary basis used to determine the severance payment is the employee’s “global” salary, which includes both regular and occasional payments received by the employee.

Severance should be paid within 5 days of the termination date. Any payments made to the employee using severance funds prior to termination of employment are treated as severance advances, and these can only be granted once a year, for up to 75 percent of the accrued severance amount. They must only be used for specific purposes listed by law, such as home construction, purchase or repair, payment of mortgages on housing, school tuition and medical expenses.

POST-TERMINATION RESTRAINTS

Non-competes

Non-compete and non-solicitation agreements are permissible but cannot exceed 6 months following termination of employment.

Non-compete and non-solicitation restrictions must:

- Be set under reasonable grounds, based on the employee’s job, their relationship with clients and access to trade secrets or other confidential information.

- Be agreed in writing.

- Provide compensation to the employee while the restriction is in place (this is only required to enforce a
non-compete provision). The amount of compensation to enforce a non-compete provision is not legally defined; therefore, it is up to the parties’ agreement.

Customer non-solicits

See under “Non-competes.”

Employee non-solicits

See under “Non-competes.”

WAIVERS

Any waivers made by the employee are only effective if implemented through a binding settlement agreement that is previously approved by a labor court or the Labor Ministry. Such authorities must verify that the settlement agreement ensures the employee’s rights before granting approval. Out-of-court agreements are not binding.

REMEDIES

Discrimination

Employees may claim termination of employment on the grounds of discrimination (as a justified cause for termination) before the labor courts. If discrimination is proved, the employer must pay twice the amount of severance payments the employee is entitled to.

Employees may also seek the restitution of a work condition affected by the discriminatory practice or the abolition of a discriminatory measure, through a claim filed before the labor authorities against the employer.

Employers are also subject to civil liability and may respond for both material and immaterial damages caused to the employee.

Unfair dismissal

Employees who have been terminated without lawful grounds may either file a claim for reinstatement before the Labor Courts or Labor Ministry or claim payment of an indemnity of twice the amount of the severance payments that the employee would ordinarily be entitled to upon employment termination with the Labor Courts.

CRIMINAL SANCTIONS

There are criminal penalties set in the labor law when an employer:

- Refuses to execute a reinstatement order
- Violates strike rights
- Fails to comply with or obstructs actions or procedures from the labor authorities or
• Illegally or fraudulently closes or ceases operations.

In these cases, the employer’s representatives or managers would be subject to criminal liability with imprisonment between 6 and 15 months.

Employers may also be held liable where an employee dies due to a serious breach of health and safety obligations in the workplace, subject to imprisonment between 8 and 10 years.

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LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. The official currency is the Vietnamese dong (VND). The official language is Vietnamese, but English has become increasingly popular in the business community.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity without a license to operate in Vietnam cannot directly hire Vietnamese employees.

Employers must pay social insurance in respect of Vietnamese employees (currently 17.5 percent, including 3 percent to the sickness and pregnancy fund, 0.5 percent to the work-related accidents and occupational disease fund, and 14 percent to the retirement and survivorship fund), health insurance (currently 3 percent), unemployment insurance (currently 1 percent), as well as trade-union fees (currently 2 percent) and withholding of the employee portion of the social insurance (currently 8 percent), health insurance (currently 1.5 percent), unemployment insurance (currently 1 percent), trade-union fees (currently 1 percent, if the employee participates in a grass-roots trade union). Salary for calculating social insurance and health insurance contributions is capped at 20 times the general minimum monthly salary, which is currently VND1,490,000 (approximately USD64), while the salary for calculating unemployment insurance contributions is capped at 20 times the regional minimum salary, which varies depending on the region. Personal income tax must be paid by employees on their assessable income, but the employer must make tax declarations, deduct and remit tax to the state budget, and is generally responsible for undertaking tax finalization on behalf of the employee.

In terms of compulsory insurance contributions for foreign employees who have (i) a work permit or practicing license and (ii) a labor contract with an indefinite term or a term of 1 full year or more, employers must pay social insurance premiums in respect of foreign employees (currently 17.5 percent, including 14 percent to the superannuation and survivorship fund, 3 percent to the sickness and pregnancy fund and 0.5 percent to the work-related accidents and occupational disease fund) together with health insurance contributions (currently 3 percent) and withholding of the foreign employee’s portion of social insurance (currently 8 percent) and health insurance premiums (currently 1.5 percent). The salary for calculating social insurance and health insurance contributions is capped at 20 times the general minimum monthly salary which is currently VND1,490,000 (approximately USD64).
PRE-HIRE CHECKS

Required

Generally, before hiring foreign employees to work in Vietnam, employers must obtain prior written approval from the provincial People’s Committee through the Department of Labor, Invalids and Social Affairs (DOLISA).

Possessing a valid work permit issued by the provincial labor authorities is a compulsory condition for foreign citizens to work in Vietnam, except where an exemption applies. Legal sanctions for the employer of a foreign citizen without a work permit include fines. A foreign citizen working in Vietnam without a work permit risks deportation and fines. See the “Immigration” section for further details.

Permissible

Employers may request that their employees provide information relating to the execution of an employment contract, such as full name, age, gender, residence address, education level, occupational skills and health conditions.

There are no regulations on obligatory pre-hire checks, including pre-hire reference checks, pre-hire criminal checks or pre-hire credit checks, in the Labor Code 2019. However, specific regulations exist in more heavily regulated fields, such as aviation, security and medicine. Questions about an applicant’s past, health and criminal record are generally permissible in Vietnam.

IMMIGRATION

A valid work permit and a temporary resident card or a visa are required for foreign nationals who wish to reside and work in Vietnam for more than 90 days per year. A foreign national entering Vietnam to work without a valid work permit may be subject to fines and expelled from Vietnam. A work temporary resident card and a work visa are granted based on the validity of the work permit.

The employer applies for work permits on behalf of the foreign employee with a prescribed application form. Applications for prior written approval for a work permit may be submitted physically, via post or electronically at http://dvc.vieclamvietnam.gov.vn/.

HIRING OPTIONS

Employee

Individuals may be employed on an indefinite-term contract or a definite-term contract.

Under a definite-term contract, the parties agree to the term and the time of termination of the contract for a period not exceeding 36 months.

Independent contractor
A Vietnamese individual may provide services to an enterprise or organization in Vietnam as an independent contractor, although they should generally have a household business registration to do so. The provision of services as an independent contractor falls under the jurisdiction of the 2015 Civil Code, the 2020 Law on Enterprises and the 2005 Commercial Law and is generally not considered an employment relationship to which the labor laws apply. Consequently, an independent contractor is not entitled to any statutory employment rights under Vietnam law.

The new Labor Code 2019 strengthens the protection of employees engaged under a services or consultancy agreement without justification in order to avoid employment rules. The new Labor Code 2019 provides that the name of the contract does not determine its qualification, and, when such a contract specifies the “work to do” (công việc phi làm), wages, management (quản lý) and administration (iu hành) of the hired party, then such a contract must be regarded as an employment contract.

As a general rule, the use of a service contract for permanent and long-term work is not encouraged and may be viewed by the labor authorities as a circumvention of employment-related requirements, such as contributions to statutorily required insurance for employees. This risk may be increased if the individual does not have a household business registration.

**Agency worker**

An agency worker is an employee recruited by an enterprise licensed to conduct employment outsourcing who thereafter works for another employer (ie, a subleasing employer). Such employee is subject to management by the subleasing employer but maintains an employment relationship with the employment outsourcing enterprise. The period of any employment outsourcing must not exceed 12 months. Agency workers have the right to receive pay and benefits equivalent to those specified in the employment contract signed between the employer and the employment outsourcing enterprise. Further, the employment outsourcing enterprise must ensure that the agency worker receives a wage not lower than that of an employee of the subleasing employer with the same job and professional qualifications, or a job of the same value. Additionally, the subleasing employer has an obligation, among others, not to discriminate regarding labor conditions between agency workers and other employees of such subleasing employer.

**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

Employment agreements may be in written or electronic form – or verbal form if the term of employment is less than 1 month. Employment agreements must contain specific provisions in accordance with the Labor Code 2019, which are further detailed and clarified by Circular 10/2020/TT-BLDTBXH dated November 12, 2020 from the Ministry of Labor - Invalids and Social Affairs.

**Probationary periods**

Permissible if agreed between the parties. During the probation period, the employer should pay the employee no less than 85 percent of the full-time wage. The probation period must not exceed 180 days in the case of an
enterprise manager role pursuant to the Law on Enterprises, and the Law on Management and Use of State Capital Invested in Production and Business in Enterprises, 60 days for work requiring specialized or technical skills and at least college level equivalency, 30 days for work requiring specialized or technical skills and at least vocational high-school level and beyond, or 6 business days for other types of work. An employee working under a definite-term labor contract with a term of less than 1 month may not be subject to a probationary period. Either party may terminate employment during the probationary period without prior notice or payment of severance.

Policies

Enterprises with 10 or more employees must have written internal labor regulations. The employer must consult with the relevant collective body regarding written internal labor regulations and register the same with the competent labor authority. Employees must be made aware of the regulations which must also be clearly displayed at the workplace. The regulations must cover:

- Working hours and rest breaks
- Rules and codes of conduct
- Occupational health and safety
- Prevention of sexual harassment in the workplace and the procedures for dealing with a breach involving an act of sexual harassment in the workplace
- Protection of assets and confidentiality
- Cases in which an employee may be temporarily transferred to undertake work different from that specified in their labor contract
- Disciplinary procedures and penalties
- Liability for material damage and
- The person having authority to impose disciplinary penalties.

The relevant collective body is an organization representing the employees at the grassroots level, including the grassroots trade union and employee’s organization, which form together the Organization Representing the Employees at the Grassroots Level. It is not compulsory to establish a trade union or an employee’s organization at company level, but a trade union can be established upon the voluntary participation of at least 5 employees. Guidance on establishing an employee’s organization at the company level has not as yet been issued.

The employer must consult the opinion of the Organization Representing the Employees at the Grassroots Level in case the employer has such an organization about its internal labor regulations.

The new Labor Code 2019 and implementing decree No. 145/2020/ND-CP also provides that the persons having the authority to issue disciplinary sanctions are those who have the authority to enter into employment contracts on behalf of the company as prescribed in Clause 3 Article 18 of the Labor Code 2019 or the persons specified in the company’s internal labor regulations.
Third-party approval

An employer must register its internal labor regulations with the competent labor authority where the company is located. Each province has a Department of Labor, Invalids and Social Affairs (DOLISA), but there is only one Ministry of Labor, Invalids and Social Affairs (MOLISA), located in Hanoi. While MOLISA is the higher authority, regulatory interpretations may differ between DOLISAs.

**LANGUAGE REQUIREMENTS**

No statutory language requirements exist. However, in the event of dispute, the labor courts review documents in Vietnamese only.

**MINIMUM EMPLOYMENT RIGHTS**

Employees entitled to minimum employment rights

All.

**Working hours**

The maximum number of normal working hours is 8 hours per day and 48 hours per week. Employers have the right to stipulate that employees work on a daily or weekly basis, but they must notify the employee of such. If a weekly basis applies, normal working hours must not exceed 10 hours in 1 day and must not exceed 48 hours in 1 week.

Any employee working at night shall be paid an additional 30 percent on top of the wage for such work conducted during the daytime.

**Overtime**

Employers may require an employee to work overtime, but only when:

- The employee agrees

- The overtime hours do not exceed 50 percent of the normal working hours in 1 day and

- Where working hours are implemented on a weekly basis, the total of normal working hours and overtime hours do not exceed 12 hours in 1 day, 40 hours in 1 month or 200 hours in 1 year or, in special cases, 300 hours in 1 year, the latter subject to written notification being provided to the provincial labor authorities.

No employees are exempt from the overtime requirements.

Employers must pay employees who work overtime and work at night.
Overtime means the period of time spent working in addition to normal working hours, as stipulated by law, in the collective labor agreement or in internal labor rules.

An employee who works overtime must be paid according to the wage unit price or wage of their current work as follows:

- On normal days, at a rate of at least 150 percent
- On weekly days off, at a rate of at least 200 percent
- On holidays and paid leave days, at a rate of at least 300 percent, exclusive of the individual’s normal daily wage

If the employee works overtime at night, the employee must be paid the relevant overtime rate (ie, 150 percent, 200 percent or 300 percent of their normal daily rate) plus 20 percent of the applicable rate (ie, if the employee was not working overtime prior to commencing overtime at night, they are entitled to an additional 20 percent on their normal daily rate, but if the employee was already working overtime prior to working overtime at night, they will be entitled to an additional 20 percent on that overtime rate). Further, as noted above, if working at night, whether overtime or not, the employee is entitled to an additional 30 percent of their normal daily rate.

Wages

By law, employers must establish a salary scale, payroll and labor rates which are the basis for recruiting employees and reaching agreement with them on the salary rate to be stipulated in labor contracts. When formulating its salary scale, payroll and labor rates, the employer must seek an opinion from the Organization Representing the Employees at the Grassroots Level if the employer has such an organization. Thereafter, the employer must make an advance public announcement at the workplaces of its employees before implementation.

The government announces a minimum monthly area wage rate that is normally amended once a year and has 4 levels depending on the geographic location. The minimum area wage is the lowest rate that can be paid to employees doing the most basic work in normal working conditions. The current minimum wage ranges from VND3,070,000 per month (approximately USD132) to VND4,420,000 per month (approximately USD190) depending on the location. Note, however, that the lowest wage level for work of a job title requiring the employee to have received vocational or trade training, including employees trained by the employer itself, must be at least 7 percent higher than the minimum wage rate stipulated by the government.

The government also announces a general minimum monthly wage from time to time – normally once per year – that applies for state employees but is also used to determine the maximum amount of monthly wage on which social insurance or health insurance premiums are based (ie, equal to 20 months’ general minimum wage level). The general minimum wage is currently VND1,490,000 (approximately USD64).

Vacation

An employee who works for the employer for 12 full months is entitled to fully paid annual leave as follows:

- 12 working days for employees working in normal conditions
14 working days applicable to employees who are under 18 years old, have disabilities or work in heavy, toxic or dangerous jobs

16 working days applicable to employees working in extremely heavy, toxic or dangerous jobs as defined in the list issued by the MOLISA

An employee may agree with an employer to take annual leave in installments or to combine 3 periods of annual leave and take leave once every 3 years.

Sick leave & pay

Employees on leave due to sickness or personal accident (not labor accidents) are entitled to receive a monthly allowance paid by Vietnam’s social insurance fund. There is no obligation for an employer to pay an employee during sickness absence. The allowance from the social insurance fund is also available to those who take leave to care for sick children under 7 years old and is equal to 75 percent of salary (on which social insurance premiums are based) for the month preceding the leave. A medical certificate from a health establishment must be provided by the employee.

The maximum entitlement is:

- 30 days per year if the employee has contributed to the social insurance fund for less than 15 years
- 40 days per year if the employee has contributed to the social insurance fund from 15 years to less than 30 years and
- 60 days per year if the employee has contributed to the social insurance fund for 30 years or more.

There is no limitation on the number of days that an employee can be on leave due to sickness if the employee can reach an agreement with the employer on leave of absence without pay. However, the employer has the right to unilaterally terminate the labor contract if the employee is ill or injured and remains unable to work after having received treatment for a period of 12 consecutive months in the case of an indefinite-term labor contract, or 6 consecutive months in the case of a definite-term contract of 12 up to 36 months, or more than half the duration of the contract in the case of a definite-term contract with a duration of less than 12 months.

Maternity/parental leave & pay

Women are entitled to 6 months of maternity leave. The maximum maternity leave prior to childbirth is 2 months, and the remainder is taken after birth. For multiple births, the mother is entitled to an additional 1-month leave for each child from the 2nd child. An employee who adopts an infant child is entitled to maternity leave until the child is 6 months old.

A male employee who pays social insurance premiums and whose wife gave birth to a child is entitled to paternity leave of 5 to 14 working days depending on the number of children born and the circumstances of the birth.

During maternity leave, the employee receives a monthly allowance of 100 percent of their average salary (on which social insurance premiums are based) in the preceding 6 months from the government, provided that the employer has paid social insurance premiums for the employee for at least a full 6 months in the 12-month period before childbirth or child adoption. Female employees who give birth or employees adopting a child under 6
months are entitled to a lump sum allowance equivalent to twice the monthly basic salary for each child in the month of childbirth or adoption. This lump sum allowance is in addition to paid maternity leave.

**DISCRIMINATION**

Any discrimination on the grounds of race, color, gender, nationality, social class, ethnicity, age, maternity status, marital status, religion, belief, political belief, HIV status, family responsibility, disability or joining or establishing a trade union or employees’ organization at the enterprise is prohibited. Discrimination against outsourced employees is additionally prohibited.

**BENEFITS & PENSIONS**

In accordance with Decree No. 135/2020/ND-CP, the compulsory retirement age for employees working in normal conditions will be progressively adjusted to 62 years old for male employees in 2028 and 60 years old for female employees in 2035.

An employee whose ability to work is reduced; who performs particularly heavy, toxic or dangerous work; or who works in areas where the socio-economic conditions are particularly difficult may retire at an earlier age but no earlier than 5 years before the normal retirement age, unless otherwise provided by Vietnamese law.

The retirement age may be increased by up to 5 years for employees with high technical expertise or professional qualifications, or in a number of other special cases.

A retiree is entitled to a monthly pension financed by the social insurance fund if that person has reached retirement age and has been paying into the fund for at least 20 years. Men and women are entitled to the same maximum pension rates. Lower pension rates may apply to those who only partially satisfy the above requirements. A lump-sum payment may apply where an employee fails to meet the above requirements.

**DATA PRIVACY**

The Civil Code requires any person to seek the consent of an individual before collecting, storing, using or publishing their personal data. The parties to a contract are not permitted to disclose any information about each other’s private life or personal affairs of which they became aware in the course of entering into and performance of the contract.

The 2018 Law on Cyber Security covers any domestic or foreign enterprise that provides services on telecommunications networks, the internet or value-added services in Vietnam's cyberspace. The law governs the collection, exploitation, analysis and processing of personal data, data about service users' relationships and data generated by them in Vietnam. Under this law, any such data must be stored in Vietnam under the terms stipulated by the government.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

Upon a transfer of assets, change of ownership, division or separation, consolidation or merger, sale, lease out or conversion of the company’s form impacting the job of several employees, the previous employer must prepare a
so-called labor usage plan. The previous employer and the successor employer must implement the labor usage plan. When employees’ employment contracts are terminated as a result of the transaction or conversion, the employer must pay a specific severance allowance, called a job-loss allowance, to the affected employees who have regularly worked for the employer for 12 or more months.

**EMPLOYEE REPRESENTATION**

Trade unions act as employee representatives in Vietnam. The employer is responsible for encouraging and providing favorable conditions for the establishment of a trade union within the workplace. Trade unions participate in the improvement of social legislation, represent workers in the negotiation and execution of collective agreements, and assist in labor disputes. An employer is prohibited from being prejudiced against employees based on their participation in a trade union.

Employers are not obliged to establish a trade union, but they are intended to create a favorable environment for their establishment. In order for a trade union at enterprise level to be established, 5 or more employees must unite and request recognition by the higher-level union. Employees who are trade union officers may conduct trade union activities during working hours. Such employees have specific protection against termination of their employment. All employers and enterprises, regardless of whether a trade union is established or not, including foreign-invested enterprises, must pay into the trade union fund at a rate of 2 percent of their payroll (on which social insurance premiums are based). This trade union fee paid by the employer is a permissible deduction when assessing corporate income tax.

In practice, production companies tend to have a union, whereas service companies do not.

In parallel to a grassroots trade union, the Labor Code 2019 enshrines the right of employees to set up or join a labor representative organization, called an employee organization, that is independent from the existing trade union system managed by the Vietnam General Confederation of Labor.

**TERMINATION**

**Grounds**

The grounds for termination of an employment contract include the following:

- Expiry of the term
- The agreed work is completed
- Agreement between the parties
- Employee is imprisoned or legally prevented from carrying out the contract
- The foreign employee is deported in accordance with an order issued by the courts or competent authorities
- The work permit of a foreign employee expires
• The employee dies, is missing or has lost legal capacity for civil acts

• The employer dies, is missing or loses legal capacity for civil acts, or ceases its operations; or a business registration authority states that the company does not have a legal representative or authorized person

• The employee is dismissed in accordance with the laws

• One of the parties unilaterally terminates (eg, due to performance issues) in accordance with the law

• The employer makes the employee redundant as a result of a restructuring, a change of technology, economic reasons or due to a merger, division, sale, lease, conversation of the company’s form, consolidation or separation of the enterprise, transfer of ownership or rights of the assets of the enterprise, and

• One of the parties terminates the employment contract or probationary contract during or at the end of the probationary period.

An employer may unilaterally terminate an employment contract where:

• The employee repeatedly fails to perform their work in accordance with the terms of the labor contract. However, in order to do so, the employer must specify the criteria for assessing the level of completion of work in a performance policy. Such a policy must be issued after consulting the Organization Representing the Employees at the Grassroots Level, if any

• The employee is sick or has an accident and remains unable to work after relevant periods of medical treatment specified at law

• The employee fails to attend the workplace after 15 days from the expiration of a labor contract suspension period

• The employee has reached the retirement age

• The employee is absent from work without a legitimate reason for 5 consecutive working days or more

• The employee provides false information that affects the recruitment of the employee or

• The employer is forced to reduce employment, after attempting all measures to recover from a natural disaster, fire or dangerous epidemic, enemy destruction, resettlement or narrowing of production and business as required by a competent State agency.

An employee on an indefinite-term employment contract may unilaterally terminate the contract if they provide the employer with at least 45 calendar days’ advance notice or at least 120 calendar days’ advance notice (if the employee works in certain industries and trades and special jobs as regulated by the government, including as an enterprise manager as prescribed by the Law on Enterprises).

An employee working under a definite-term labor contract from 12 to 36 months may unilaterally terminate the contract by giving a 30 calendar days’ advance notice or 120 calendar days’ advance notice (if the employee works
in certain industries and trades and special jobs as regulated by the Government, including as an enterprise manager as prescribed by the Law on Enterprises).

Further, an employee working under a definite-term employment contract with a term of less than 12 months may unilaterally terminate the contract by giving advance notice of at least 3 working days or advance notice of a period equal to a quarter of the term of the employment contract (if the employee works in certain industries and trades and special jobs as regulated by the Government, including as an enterprise manager as prescribed by the Law on Enterprises).

However, the employee is not required to give an advance notice to the employer if the employee:

- Is not assigned to the correct job or workplace, or is not given the work conditions agreed upon in the contract
- Is not paid their salary fully or in a timely manner
- Is mistreated, humiliated or forced to work by the employer
- Is sexually harassed at the workplace
- Is pregnant and must cease working per the advice of a competent medical examination and treatment establishment
- Reaches the retirement age or
- Has been provided untruthful information by the employer which has adversely affected the implementation of the employment contract.

Employees subject to termination laws

All.

Restricted or prohibited terminations

An employer is not permitted to unilaterally terminate an employment contract if:

- The employee is suffering from an illness or injury caused by a work-related accident or occupational disease and is undergoing treatment by a doctor, other than in the circumstances specified in the "Grounds" section above
- The employee is on annual leave, paid leave or any other type of leave permitted by the employer or
- The female employee is pregnant, the employee is on maternity or paternity leave or is nursing a child under 12 months of age.

Third-party approval for termination/termination documents

Not applicable.
**Mass layoff rules**

Mass layoff rules apply in cases of termination of employment due to restructuring, change of technology or changes for economic reasons. If the employer is unable to create new jobs and must make employees redundant, the employer must pay severance allowances to those employees. In order to conduct a mass layoff of its employees, the employer must have discussions with the organization representing the labor collective at the grassroots level and provide 30 days' advance notice to the provincial state administrative body for labor and to the impacted employees.

**Notice**

The employer must give prior notice to the employee when unilaterally terminating an employment contract, unless otherwise provided by law. The notice period must be:

- At least 45 days in the case of an indefinite-term employment contract
- At least 30 days in the case of a definite-term contract with a term of from 12 months to 36 months and
- At least 3 working days in the case of a definite-term contract with a term of less than 12 months, or in the case of termination of the contract due to illness or injury of the employee, as prescribed by law.

However, where the employee performs certain jobs regulated by the government (including, inter alia, where the employee works as an enterprise manager as prescribed in the Law on Enterprises), the employer must provide at least 120 days’ advance notice if the employee is working pursuant to an indefinite-term employment contract or a definite-term employment contract of 12 months or more, or an advance notice of at least a period equal to a quarter of the term of the employment contract if the employee is working pursuant to an employment contract with a term of less than 12 months.

**Statutory right to pay in lieu of notice or garden leave**

There is no specific right of payment in lieu of notice or garden leave under Vietnamese law. However, the employer and the employee are generally entitled to mutually agree to payment in lieu of notice or garden leave.

**Severance**

Generally, employees working for 12 months or more are entitled to a severance allowance equal to the aggregate amount of half of 1 month's salary for each year of employment, unless the employee and the company contributed to the mandatory unemployment insurance scheme for the entire duration of the employment relationship.

In the event of restructuring, change of technology or changes for economic reasons; or upon the merger, consolidation, division or separation of an enterprise; or sale, lease out or conversion of the enterprise’s form; or transfer of the ownership or rights of the assets of the enterprise, the retrenchment allowance is 1 month's salary for each year of employment, with a minimum of 2 months' salary.

An employee who unilaterally and illegally terminates a contract is not entitled to a severance allowance and must pay compensation to the employer of half of 1 month’s salary.

"Salary," for the purposes of calculating severance payment, refers to the average salary set out in the labor
contract including (1) wage rates for the work or position (based on the wage scales formulated by the employer in accordance with labor laws), (2) wage allowances and (3) other additional items specified together with the wage rate agreed in the labor contracts which are regularly paid each pay period earned in the 6 months immediately preceding termination.

POST-TERMINATION RESTRAINTS

Non-competes

There is no regulation of non-compete clauses in the Labor Code 2019. Article 21.2 stipulates that, when an employee performs work which is directly related to business or technological secrets, the employer has a right to obtain the employee's written agreement to terms of confidentiality for business secrets and technology as well as on payment of compensation, an agreement that is generally enforceable during employment should the employee breach it.

Generally, non-compete provisions are permissible, but the labor authorities have taken the view that labor documents may only deal with labor matters while an employee is employed, and covenants in a labor contract that are drafted to survive termination of the labor relationship are not enforceable. It is uncertain how the courts would interpret this. Given this, it is recommended that any non-competes that are intended to survive termination of the labor relationship also be included in a separate standalone contract between the employer and employee outside the labor contract, as such agreement is treated as a civil agreement and covenants therein may survive termination of the labor relationship.

Customer non-solicits

Not regulated. Uncertain in terms of enforceability.

Employee non-solicits

Not regulated. Uncertain in terms of enforceability.

WAIVERS

The waiver of statutory rights is not regulated by labor laws and may be unenforceable in practice.

REMEDIES

Discrimination

Employers (who are individuals) are subject to a fine of between VND5 million (approximately USD217.24) and VND10 million (approximately USD434.48) for discrimination on the basis of race, gender, skin color, nationality, social class, ethnicity, age, maternity status, marital status, belief, religion, political belief, disability, family responsibility or HIV infection. Levels of fines applicable to organizations that serve as employers are twice the levels noted above.
Unfair dismissal

An employer (who is an individual) may face a penalty of up to 3 years' imprisonment on a case-by-case basis if the act of illegally laying off an employee results in serious consequences.

The employer must take the employee back to work under their labor contract and must pay wages, social insurance, health insurance and unemployment insurance for the period during which the employee did not work, plus at least 2 months' wages in accordance with the labor contract.

If the employer does not wish to re-employ and has the employee's consent, then, in addition to the compensation prescribed above and the severance allowance, the 2 parties may agree upon an additional amount of compensation of at least 2 months' wages in order to terminate the labor contract.

If the role that an individual employee held no longer exists, and the employee wishes to continue to work, then, in addition to the compensation mentioned, the 2 parties must negotiate an amendment or supplement to the labor contract.

Failure to inform & consult

An employer (who is an individual) may be subject to a fine of between VND5 million (approximately USD217.24) and VND20 million (approximately USD868.96) for the following:

- Failing to consult the organization representing the employees at the grassroots level (where the company has such an organization) on formulation of wage scales, wage tables, labor rates and bonus rules, and the performance policy/rules on assessment of the level of completion of work.

- Refusing to reach a written agreement with the executive board of organization representing the employees at the grassroots level when unilaterally terminating employment contracts, re-assigning workers or laying off workers who are members of the leadership of the organization representing employees at the grassroots level, but not yet at the level justifying criminal prosecution.

Levels of fines applicable to employers which are organizations are twice the levels noted above.

CRIMINAL SANCTIONS

Employers may be criminally liable for certain violations, such as unlawfully dismissing an employee or using force or threats which cause an employee to resign, and may be subject to a fine, imprisonment or both.
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