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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 2019 edition of our popular guide covers all of the employment and labor law basics in 60 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.
ARGENTINA

LEGAL SYSTEM, CURRENCY, LANGUAGE

Constitutional and civil law with certain application of case law. Pesos (ARS). Spanish.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

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

Employers must pay social security contributions (23% or 27% on top of salaries, depending on the company’s activity and revenues). Employees must contribute 17% 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%, subject to a progressive scale).

Collective bargaining agreements 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 Hazard 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 which subsequently arise 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 often done in practice) for specific roles (e.g., high-level managerial positions). Reference and educational checks are common and
permissible, provided applicant consent is previously obtained.

**IMMIGRATION**

Foreigners from non-Mercosur countries 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 can 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 his/her employer; an employer who directs and subordinates the individual; 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 can engage workers through agencies. Agencies must be authorized by the authorities to function as an agency.

The employer will be 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
be in writing, made orally, etc. 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

No statutory language requirements; however, in practice, employment contracts are drafted in Spanish.

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 3° 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 rendered.

The main factors that will 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 his/her employer
- The employer will direct and subordinate the employee, appoint the services and duties required and order the employee to comply with a schedule

Courts will also weigh 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 to be 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 (main managers, directors etc.).

Overtime

Employees in Argentina are allowed to perform overtime. Overtime will be only compulsory in cases of danger or 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%, calculated using the employee’s usual salary if the overtime hours were worked during business days, and 100% on Saturday after 1pm, 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 Production and Labor. The NMW rate as of December 2018 is AR$11,300.

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 to 10 years of seniority; 28 days for employees with between 10 to 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/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 longer. 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, but it may not be less than 30 days, and add those days to the maternity leave period after the birth of the child. In the event of premature birth, the period of
Employment

The leave that has not been enjoyed 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, hereinafter 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 Data Privacy Law No. 24,766 sets limits to the type of personal data that may be collected by prohibiting the collection of sensitive personal data, such as data that is related to political or religious opinions, and regulates the collection, use, processing and transfer of personal data.

Employers are allowed to monitor employee’s work devices, provided the employee is duly notified in advance, and personal information is safeguarded and not disclosed.

**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 will be taken on by the transferee after the transfer.
Employment contracts will continue with the transferee and the employees will retain their seniority with the transferor and the rights arising from it. Therefore, on the execution of the transfer, all employees are automatically transferred to the transferee, after their written consent has been obtained.

Although in practice both internal consultations and collective consultation with trade unions are held 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. However, in order to perform the transfer of staff, the employee’s written consent must be given prior to the transfer. In the absence of this consent, the employee may terminate the employment, with the right to compensation.

The transferor and the transferee will be 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 of Production and Labor. Only recognized and authorized unions can enter into a CBA. Employers cannot recognize an unauthorized union voluntarily, not 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 very common in Argentina. There are different types of CBAs depending on the territory in which they are going to be enforceable. Some CBAs only govern employees within one specific 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 can be dismissed with payment of statutory severance, which will differ based on the case (maternity, illness, etc.)
Pregnant employees are protected from dismissal. If a pregnant employee is dismissed within the period of 7-1/2 months before or after the date of childbirth, the pregnancy will be considered to be 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 a dismissal occurs 3 months before the marriage of an employee, or 6 months after it, the dismissed employee will be entitled to a special compensation.

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

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

Under Decree No. 1043/18 (effective as of November 14, 2018), employers wishing to dismiss indefinite term employees without cause must notify the Ministry of Production and Labor at least 10 business days before the decision goes into effect. This Decree is effective through March 31, 2019.

As this decree was issued recently, there is no administrative or judicial case law interpreting the Decree.

**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
- 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 of Production and Labor. During this procedure, the company will engage in negotiation with the respective union acting on behalf of their members. The aim of this procedure is to avoid business shutdowns or bankruptcy. After the company files the request at the Ministry of Production and Labor, the Ministry will forward the claim within 2 business days of the filing to the other party for its response. After a response is made, a settlement hearing will be scheduled within the next 5 business days. If a settlement is not reached, the Ministry will open a "negotiating period" that must not extend beyond 10 business days. If the parties still do not reach to 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 the 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 nor 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). The Ministry of Production and Labor governs the updating of this average for every authorized trade union.

If the employee is not subject to a CBA (typically, senior employees), the limits applicable to the activity in which he/she performs duties will apply. In no case will the amount of the compensation payable be less than 1 month of real 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% of the employee’s monthly and usual compensation, the amount to be multiplied by the years of service of the employee, 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%.

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

**POST-TERMINATION RESTRAINTS**

Non-compete, customer 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 are capable of being 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, his/her position in the company, the agreements that the company intends to impose and the extent (period and territory) of the restrictive covenant.

The law does not specifically regulate restrictive covenants. However, most restrictive periods range between 2 years to 5 years. However, 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 can 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 case the event of a complaint based on harassment, the employee can 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 will be declared 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**

Not applicable for terminations as there are no consultation obligations.

**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.
KEY CONTACTS

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LEGAL SYSTEM, CURRENCY, LANGUAGE

Common law jurisdiction with employment laws that operate at both the federal and state levels. Australian Dollar (AU$). 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 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 (called Pay as You Go or PAYG tax withholding) and also to pay 9.5% of salary (which will gradually be increased over coming years to 12%) into the employee's superannuation account (a form of pension system).

PRE-HIRE CHECKS

Required

Immigration compliance.

Permissible

Permitted with 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 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. (The former subclass 457 Temporary Work (Skilled) Visa no...
longer accepts new applications).

HIRING OPTIONS

Employee

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

Independent contractor

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

Agency worker

Agency or temporary workers are used widely by some organizations for short periods. Agency staff are not engaged as employees of the business where they are placed on assignment.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

A contract can be oral, but written contracts are strongly recommended and all new employees must be given a Fair Work Information Statement containing key terms as soon as possible after the commencement of employment.

Probationary periods

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

Policies

Not mandatory, but some policies (especially regarding anti-discrimination and harassment, bullying and occupational health and safety) are strongly encouraged by laws and regulations.

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**

38 hours a week, although the 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.

**Wages**

National minimum wage as of July 1, 2018 is AU$719.20 per week or AU$18.93 per hour. This is reviewed annually.

**Vacation**

4 weeks' paid annual leave during each year of service accruing progressively. In addition, an employee is entitled to be absent from work on a day that is a public holiday (8 days in total are observed nationally). Casual employees would not normally be paid for their vacation. To make up for this, they receive extra pay, called casual loading.

**Sick leave & pay**

Employees are entitled to take 10 days of paid personal/carer's leave for each year of service. An employee may take the leave if he/she is 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. Casual employees would not normally be 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 for separate periods of up to 12 months in a single continuous period in relation to the birth or adoption of a child. As a result, the couple employees may take up to a total of 24 months' leave between them. However, if only one person is taking leave as opposed to both persons of the couple, or if one 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.

If both members of the couple are taking unpaid leave, the leave entitlement has to be used in 2 separate periods. However, there are the 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 paid parental leave scheme exists, entitling eligible employees to 18 weeks' paid parental leave at the national minimum wage, 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 in 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 9.5% of employees’ quarterly “earnings base” to employee superannuation funds. There is a minimum monthly wage that should be paid before an employee is entitled to the 9.5% and a maximum contribution base. Most employers make regular contributions to the employee superannuation fund rather than making lump sum quarterly or annual contributions.

Australian law also 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 very stringent data privacy obligations. As a general rule, personally identifiable data can 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 (such as pre-employment/hire documentation). 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 which 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/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 (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 two employers (including the sale and purchase of all or part of a business, certain outsourcing and in-sourcing arrangements and where the two employers are associated entities), the new employer agrees to employ some or all employees of the old employer 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 agreement) that covered the employee before the transfer will continue to apply after the transfer. The Fair Work Commission can make certain orders altering the effect of the transfer of business rules if it deems it appropriate.

EMPLOYEE REPRESENTATION

Under federal law, employees can choose to be represented by a union or not. As a consequence, any union validly appointed to represent an employee or employees must be recognized and dealt with according to the law. There are 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; or termination (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) and earn less than the high income threshold (currently AU$145,400); or who are covered by a modern award or enterprise agreement, are eligible to make a claim for unfair dismissal.

Prohibited or restricted terminations

Employers are prohibited from taking "adverse action" (including termination) against other persons because the other person has or exercises a "workplace right," or engages lawful 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 because of 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 redundant, including notifying the relevant government agency and relevant unions.

Notice
Between 1 week and 4 weeks depending on length of continuous employment (although employment contract may specify longer notice period). Where an employee is over 45 years of age and has completed at least 2 years’ continuous service, he or she will be entitled to another week’s notice.

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

Employer can pay in lieu of notice. 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.

<table>
<thead>
<tr>
<th>Period of continuous service</th>
<th>Pay</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 12 months of service</td>
<td>0</td>
</tr>
<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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<tr>
<td>3 years of service to less than 4 years of service</td>
<td>7 weeks’ pay</td>
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<tr>
<td>4 years of service to less than 5 years of service</td>
<td>8 weeks’ pay</td>
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<tr>
<td>5 years of service to less than 6 years of service</td>
<td>10 weeks’ pay</td>
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<tr>
<td>6 years of service to less than 7 years of service</td>
<td>11 weeks’ pay</td>
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<tr>
<td>7 years of service to less than 8 years of service</td>
<td>13 weeks’ pay</td>
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<tr>
<td>8 years of service to less than 9 years of service</td>
<td>14 weeks’ pay</td>
</tr>
<tr>
<td>9 years of service to less than 10 years of service</td>
<td>16 weeks’ pay</td>
</tr>
<tr>
<td>10 years and over</td>
<td>12 weeks’ pay</td>
</tr>
</tbody>
</table>

Note: The scale does drop from 16 weeks to 12 weeks. This is an odd historical anomaly that continues to be the case 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 some other instrument prior to that date.
POST-TERMINATION RESTRAINTS

Those that protect the employer’s legitimate business interests can be enforced to the extent reasonably necessary to protect those interests in all the 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. Statutory entitlements cannot be waived or contracted out of.

REMEDIES

Discrimination

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

Compensatory remedies for discrimination can 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 AU$72,700, whichever is less.

Failure to inform & consult

An employer who breaches any of the general protections may incur a penalty. Further, an employee, or a union acting on behalf of a member, may seek an injunction to stop the prohibited conduct or seek compensation (noting there is no cap on the amount of compensation that can be awarded).

CRIMINAL SANCTIONS

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

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AUSTRIA

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of the European Union (EU), so required to implement relevant EU Directives. Euro (€). German.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity can engage employees in Austria with proper payroll registrations, subject to business and corporate tax planning considerations. Withholdings for pay-as-you-earn (ie, social insurance [employer and employee portion], Severance Payment Funds [1.53% to the so called BV-Kasse], 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 (with exceptions for Croatia). For other non-Austrian nationals an immigration permission and a work permit is 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 can 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 typically will be either employees or workers. Agency workers have the right to equal treatment to employees in relation to pay and other benefits terms.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

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

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 (eg. minimum wages, annual leave, working time).
Working hours

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

Overtime

Legal obligation to provide payment for overtime worked, but individual agreements for all-in salary in general 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 (base salary) and which is deemed as overpayment for overtime work. The base salary has to 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 (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 1 July 2018).

Maternity/parental leave & pay

Minimum maternity leave starting 8 weeks before giving birth (according to the calculated birth date by a physician) ending 8 weeks after birth. The mother is paid a portion of her wages from the 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.

DISCRIMINATION

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.

DATA PRIVACY

Employees must be generally notified of personal data processing (and in certain cases, give consent). Strict rules apply to data transfer outside the EEA. Monitoring employees usually requires an agreement with the work
counsel (if any) or an individual agreement with each employee. Since May 2018 Austria has been subject to the General Data Protection Regulation 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 counsel (if any). Any dismissal connected to the transfer would be void unless for a good reason.

EMPLOYEE REPRESENTATION

Trade unions are prevalent in almost every sector. Collective bargaining agreements are very common, including industry-wide collective agreements. Every employee in an applicable sector by law is a member of his or her 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, members of works councils, etc., 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, generally, approval is 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 in general not mandatory (collective bargaining agreements or special legal provisions, eg with respect to trainees, may provide different regulations).

Mass layoff rules

Information of the competent Austrian authorities is mandatory for 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% of the employees; if the employer employs more than 600 employees, termination of at least 30 employees – triggers an obligation to inform the competent 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**

Every month during employment, the employer is obliged to pay 1.53% of the gross salary to a public insurer (Mitarbeitervorsorgekasse). Employee then has a severance right against that insurer, but there is no additional severance payable by the employer.

**POST-TERMINATION RESTRAINTS**

Those that protect the employer’s legitimate business interests can 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 if (i) the employee terminates the employment or 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. Bahraini Dinar (BHD). 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 will be allocated, whereby the number will depend on the type of activity of the establishment, through the Expats Management System (EMS).

As stipulated in the LMRA Law, establishments are required to pay monthly fees on every 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 strictly enforced yet.

PRE-HIRE CHECKS

Required

Foreign employees must receive prior approval from the LMRA and Ministry of Interior before they can be hired on local employment contracts. The level of background checking and screening carried out by the 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 will be 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 GCC (Gulf Cooperation Council) 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, 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 Bahrain. Some Bahraini-owned employment agencies are licensed to provide manpower on a temporary basis - such employees would remain under their sponsorship.

**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

Unlike some other GCC countries, Bahrain has no requirement to sign 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 can be attached to fulfil this requirement.

**Probationary periods**

Generally 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 the company policies and internal regulations must
be openly displayed to the 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 can be attached to fulfil 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 (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, Bahraini nationals who hold high school diplomas are entitled to a minimum wage of BHD 270 monthly. Bahraini nationals who hold diploma degrees are entitled to a minimum wage of BHD 350 monthly, and Bahraini nationals who hold university degrees, are entitled to a minimum wage of BHD 400.

**Vacation**

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 proved 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 (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. An employee can take a further 15 consecutive or non-consecutive days 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 Bahrain.

DISCRIMINATION

The Labor Law prohibits discrimination 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 her infant shall be deemed to be automatically unfair.

BENEFITS & PENSIONS

In respect of Bahraini national employees, the employer is required to set up (and contribute to) a pension fund. All other employees are entitled to receive an End of Service Gratuity (EOSG) on termination calculated by reference to age 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 Bahrain 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 Bahrain laws, including the protections set out in the Bahrain Penal Code.

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 re-trained 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 these grounds: during the probationary period, on the expiry of a fixed term contract, dismissal with notice provided it is for a valid reason, following a failure to improve performance after reasonable opportunity (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.

**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 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 a flight/air 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 must have allowed them to know the company's clients and/or know the secrets of the business.

The 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 to be automatically unfair if it is based on the employee’s sex, race, religion, belief, social status, family responsibilities, a female worker’s pregnancy, childbirth or nursing her infant. The employee will be entitled to compensation as detailed in arbitrary dismissal below.

**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 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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BELGIUM

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of European Union (EU), so required to implement relevant EU Directives. Euro (€). Dutch, French and German.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity can 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% employer portion for white collar employees and up to approximately 13.07% employee portion) and income tax at progressive rates according to the amount of income (up to 53.5% updated from time to time), 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 with applicant consent.

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 specific assignment), full-time or part-time. Part-time and fixed-term employees have the right not to be discriminated against due to their status. (Also sales representatives, home and teleworkers, students, etc.)

Independent contractor

Independent contractors can be engaged directly by the company or via a personal services company. Engagement may be subject to requalification of the service agreement to an employment contract.

Agency worker

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

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

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 or for temporary work or for interim agency work.

Policies

Work regulations, containing applicable work schedules, an overview of disciplinary measures, grievance procedure, a policy on alcohol and drug abuse, etc., as well as written health and safety policy (global prevention plan, yearly action plan, dynamic risk prevention system, 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, have to be sent to the Social Information and Investigation Service.

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, 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 due to certain events (eg, sudden, unexpected increase of the workload, work to prevent or repair damages to assets) and under certain conditions (eg, written employer/employee agreement complying with a specific procedure; prior consent of the trade union delegation; notification to the Belgian Federal Government Service of Employment Labor and Social Dialogue).

Wages

At least €1,654.90 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 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% of the employee’s remuneration
- if the employee is a blue-collar worker: equal to 100% of the remuneration during the first 7 days, reduced to 85.88% 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 (deviations in case of multiple birth). During leave, allowances paid by the National Health Service (82% of pay for first 30 days, then 75%); right to return to work and protection against dismissal.
10 days of paternity leave at birth; 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, 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 notified of personal data processing (and in certain cases, give consent). Registrations with the Privacy Commission are required in certain cases. Special rules apply to data transfer outside the EEA. Significant restrictions on monitoring email and Internet use and use of cameras at the workplace. Since May 2018, Belgium has been subject to the General Data Protection Regulation, which has introduced significant new obligations and onerous sanctions for employers.

**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% of workers are members. Works councils have to be installed by social elections if the company has at least 100 employees. Committees for Prevention and Protection at Work have to be installed by social elections if the company has at least 50 employees. Industry level collective bargaining agreements, concluded within the joint committees (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 industry-wide 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, on the request of the employee, the employer will have to explain the dismissal on grounds which relate to the employee’s work ability, his/her behavior at work or the employer’s business necessities, or the employee may be entitled to a complementary indemnity.

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 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 into a daytime schedule; prevention consultant; 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 will either have to prove that the grounds of dismissal are not related to the reason why the employee is protected (eg. in case of maternity leave) or will have to 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 can 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 offence.

Notice
The following notice periods apply in case of dismissal of an employee:

<table>
<thead>
<tr>
<th>Period of continuous service</th>
<th>Notice period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 3 months</td>
<td>1 week</td>
</tr>
<tr>
<td>3 months – 4 months</td>
<td>3 weeks</td>
</tr>
<tr>
<td>4 months – 5 months</td>
<td>4 weeks</td>
</tr>
<tr>
<td>5 months – 6 months</td>
<td>5 weeks</td>
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<tr>
<td>6 months – less than 9 months</td>
<td>6 weeks</td>
</tr>
<tr>
<td>9 months – less than 12 months</td>
<td>7 weeks</td>
</tr>
<tr>
<td>12 months – less than 15 months</td>
<td>8 weeks</td>
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<tr>
<td>15 months – less than 18 months</td>
<td>9 weeks</td>
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<tr>
<td>18 months – less than 21 months</td>
<td>10 weeks</td>
</tr>
<tr>
<td>21 months – less than 24 months</td>
<td>11 weeks</td>
</tr>
<tr>
<td>2 years – less than 3 years</td>
<td>12 weeks</td>
</tr>
<tr>
<td>3 years – less than 4 years</td>
<td>13 weeks</td>
</tr>
<tr>
<td>4 years – less than 5 years</td>
<td>15 weeks</td>
</tr>
<tr>
<td>As of 5 years</td>
<td>plus 3 weeks per commenced year of continuous service</td>
</tr>
<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 (eg, construction sector).

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 can 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 (collective dismissal); protection indemnity; etc.

**POST-TERMINATION RESTRAINTS**

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

**Non-competes**

Strict conditions. In principle no longer than 12 months. Non-compete indemnity due equal to 1/2 of the remuneration due for the period of non-compete obligation, 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 can 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, his/her 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 a maximum 17 weeks’ remuneration.

**Failure to inform & consult**

Re-employment of the employees in case of a collective dismissal (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.

**KEY CONTACTS**

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View bio
BRAZIL

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Brazilian Real (R$). 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% on top of salaries. Employees will have income tax (up to 27.5%) and social security contributions (up to 11% of the compensation, subject to a legal cap) withheld at source from compensation.

PRE-HIRE CHECKS

Required

Immigration compliance. Valid ID. Pre-hire medical examination.

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

HIRING OPTIONS

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

**Independent contractor**

Independent contractors can 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**

Written agreement not legally required, but usual. 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.

**Probationary periods**

Permissible. Statutory limit of 90 days.

**Policies**

Written Employment Health and Safety policies such as 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 to the Ministry 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 set forth 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 the compensation for normal hours by at least 50%. Collective bargaining agreement may set forth higher amounts of overtime compensation. It is not possible to make a fixed payment in lieu of overtime.

**Wages**

Currently, the national minimum wage is R$998.00 per month. Regional minimum salaries and minimum salaries set forth by collective bargaining agreements often apply and may be higher.

**Vacation**

Employees are entitled to remunerated vacations (30 days) after every 12 months of work as of their hiring date. The vacation payment is equivalent to one 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 of time.

**Maternity/parental leave & pay**

Women are entitled to paid maternity leave of 120 days starting on the date of the birth of their children 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: gender, origin, race, color, marital status, family situation, age, pregnancy, religion, disability. Case law has also protected homosexuals, transgender individuals and 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, and public health coverage.

Employees must be granted transportation vouchers and benefits set out in collective bargaining agreements. Granting meal vouchers and a private health plan is not uncommon.
DATA PRIVACY

Notification and consent are recommended. The National Congress has reviewed some bills addressing data privacy matters, and a new data protection law will become effective in August 2020.

Monitoring of corporate e-mail 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 industry-wide collective agreements. Works councils are very uncommon. However, a new law, which became effective on November 13, 2017 (Law nº 13,467), 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 and also for the employee.

Employees subject to termination laws

All employees.

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 one year after the illness allowance has ceased)

• 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 be involved 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.

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% of the balance in the employee’s Unemployment Guarantee Fund (Fundo de Garantia do Tempo de Serviço) (FGTS), accrued during the employment relationship. Additional payments will be due, such as: one 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 one month’s salary.

In case of termination by mutual agreement, the company must pay half of the notice and 20% of the FGTS balance (as opposed to 40% when the termination is on the company’s initiative). The employee will be allowed to withdraw 80% of the balance of the FGTS fund (as opposed to 100% when the termination is on the company’s initiative) but he/she is not entitled to unemployment benefits in this type of termination.
POST-TERMINATION RESTRAINTS

Brazilian law does not address post-termination restraints, so enforcement of post-termination restraints can be challenging.

Non-competes

Periods of up to 24 months have been accepted, but enforceability is more likely for shorter periods (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 very 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 labor lawsuit, plus recommendation that the employer takes action.

The new 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 BRL 276,565).

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 the 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.

KEY CONTACTS

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CANADA

LEGAL SYSTEM, CURRENCY, LANGUAGE

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

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity can 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 (e.g., 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 (e.g., 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
A criminal offense for which a pardon has been granted

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 be obtained from the individual
- A proper process be followed when the credit check is undertaken

It is recommended that a conditional offer of employment be 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 rules under the North American Free Trade Agreement (NAFTA), which make it easier for certain categories of North American workers to work in Canada. There are also similar rules under the Trans Pacific Partnership (TPP) which also make it easier for certain categories of workers from signatory countries to TPP to work in Canada.

HIRING OPTIONS

Employee

Indefinite, fixed-term, full-time, part-time or casual. Employers can 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 can 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 can also create potential claims for overtime, vacation, holiday pay and notice of termination. Classification may be different under different statutory schemes, and care needs to be taken to ensure the relationship is not truly one of employer/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 economic dependence and near-complete exclusivity with 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 can also create potential claims for overtime, vacation, holiday pay and notice of termination. Classification may be different under different statutory schemes, and care needs to be taken to ensure the relationship is not truly one of employer/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.

Temporary foreign worker

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

In Canada, the hiring of temporary foreign workers is regulated by the Temporary Foreign Worker Program (TFWP). In some cases, when hiring a temporary foreign worker, an employer may be required to demonstrate, after having met specific advertising requirements, that the hiring of the temporary foreign worker 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 probation period may still allege discrimination in the
Employees entitled to minimum employment rights

In most cases, all employees are subject to minimum labour 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/work and the employee’s qualifications. For example, professionals (lawyers, doctors, etc.) 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%) begins to accrue immediately upon the commencement of employment. In most jurisdictions, vacation entitlement increases to 3 weeks (and 6% vacation pay) after 5 years of service. 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.

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 are 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.

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 his/her statutory sick leave days.
Maternity/parental leave & pay

Entitlements differ slightly by jurisdiction. In most jurisdictions, pregnant employees have the right to take pregnancy (maternity) leave of up to 17 weeks (18 weeks in Quebec) 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 61 and 63 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 paternal 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/parental leave, however, the employee can usually be required to pay his or her 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/parental leave, or for taking or planning to take a pregnancy/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/ethnic origin, record of (criminal) offences, 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/commission.

BENEFITS & PENSIONS

Employers are not required to provide benefits or pensions other than those provided through social security contributions (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 only 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
- Provide that employees who accept an offer of employment with 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 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, requiring gross and 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 is 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, 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 one 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
- Telecommunications
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 (approx. 90%) 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 (eg, 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. However, some provide for up to 10 weeks. Significantly longer notice periods (up to 2 years or more) can 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 can 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 (those with 5 or more years of service) 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 increasingly difficult to enforce. Restrictions must go no further than necessary to protect the employer’s legitimate business interests. Garden leave is becoming more common.

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.

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.

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.
REMEDIES

Discrimination

In most jurisdictions, general damages for breach of the legislation, injury to dignity or mental distress can 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 can vary widely based on individual circumstances. Reinstatement is possible.

Failure to inform & consult

Not applicable for this jurisdiction.

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 can be subject to criminal sanctions.

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CHILE

LEGAL SYSTEM, CURRENCY, LANGUAGE

Continental Law, Chilean Peso (CLP), 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 will have to 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.

PRE-HIRE CHECKS

Required

None. However, immigration check 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 can 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 can be based on any status protected by the Chilean anti-discrimination statute, including checks based on union membership or political affiliation.

IMMIGRATION

Foreigners on business trips do not require any special permit to do so because those activities are covered by the status of tourist. Foreigners from most countries can enter Chile for tourism purposes without a visa. Any tourism entrance is limited to a maximum of 90 days, renewable in exceptional circumstances for a similar term.

Foreigners are able to 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, the investment promotion authority (InvestChile) has put in place a special immigration program known as "Visa Tech" under which a technology company can request a temporary work visa for a candidate, which is processed in no more than 15 business days. For other sectors, an alternative for a relatively faster process 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 can be hired part-time (up to 30 hours of work per week) or full-time.

Fixed-term employment agreements have a maximum duration of 12 months. However, this can be extended to 24 months for employees holding a technical or professional title granted by an educational institution recognized by Chile.

**Independent contractor**

Permissible. Chilean law authorizes companies to outsource all kind of services, including the core business, or specific tasks such as cleaning services, canteen, etc. In this case, workers are dependent and subordinated to the contractor company, and not to the principal (client).

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

**Agency worker**

Outside labor through personnel supply companies can 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 has subsidiary liability.

**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, the term of payment of the compensation (which cannot exceed monthly periods).

**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.

**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 on payment of remuneration
- duties and prohibitions for the employees
- rules on the executive staff that will handle the worker’s questions and complaints
- rules on the different issues in relation to the age and sex of the employees, and the rules on adjustments that the company may need to perform for disabled employees
- rules on compliance with social security obligations, military service, 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 on sexual harassment
- rules on equal remuneration between men and women

Additionally, companies can 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 considers that any provision may be illegal.

LANGUAGE REQUIREMENTS

Documents can be drafted in any language, but pursuant to opinions of the Labor Directorate, the employee should always receive a copy translated into Spanish. It is recommended to have bilingual version of the documents.

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 hours work week cannot be spread over less than five days or more than six days. An employee is required to take a 30 minute lunch break, which is not included into the working hours. Certain types of employees are not subject to working hour limitations (eg, sales staff that provides services out of the company premises, managers and teleworkers).

Overtime

A maximum of two hours of overtime is allowed per day. Such overtime must be paid at a rate 50% higher than the employee's regular pay. Overtime must be agreed to in writing and the agreement cannot have a duration that exceeds three months.

Wages

CLP 276,000 (approximately US$460) is the statutory minimum salary. 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% 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% of net equity. However, the employer may pay a bonus of 25% 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 US$2,185) 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 one of the two above mentioned 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 three years of service.

**Sick leave & pay**

There is no limit to the number of sick days that employees are able to take. Employees are paid their normal wage through government 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 fewer than 10, the employee receives subsidies from their fourth day of sickness. 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.

**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, 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% for retirement savings (capped at 79.2 UF Unidades de Fomento - approximately US$3,250)
- 7% for health insurance and capped at 79.2 UF Unidades de Fomento - approximately US$3,250)
- 0.6% for unemployment insurance (capped at 118.9 UF Unidades de Fomento - approximately US$4,900)

Contributions for retirement 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

Contributions for unemployment insurance are always mandatory.

In addition, employers, are required to contribute to a workers compensation fund that compensates workers when they are injured on the job or are diagnosed with occupation-related diseases.
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 can 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 case of which in principle the new company that continues the operations will be considered the employer of the employees that 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 needs to change the employment conditions of the employees that 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 is the most suitable solution.

**EMPLOYEE REPRESENTATION**

Chile recognizes the right of "freedom of unionization," which includes the right to be part or not to be part of a union.

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 will need 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**

Except for managers and others specified by statute, employees cannot be terminated unilaterally without cause.
However, the law makes a distinction between standard for-cause removal reasons (e.g., failure of performance, non-attendance at work, insults to the employer, etc.), which do not entitle the employee to severance pay, and removal based on redundancy (or the unilateral removal of managers), which do entitle the employee to severance pay if the employee has been in the position for more than 1 year.

**Employees subject to termination laws**

All employees.

**Restricted or prohibited terminations**

Among others, pregnant women and women for up to 1 year and 12 weeks after birth of the 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.

30 days' notice for termination of any employee based on redundancy.

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 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 contractual clause on that matter would be considered void.

**Severance**

If the employee has worked in the position, uninterrupted, for more than 1 year, 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 UF 90 (approximately US$4,000). Employment contracts can specify more generous severance terms.

**POST-TERMINATION RESTRAINTS**

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

**Non-competes**

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

So far, 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 of 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 because of 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 because of the constitutional protections identified above.

**WAIVERS**

While the employment agreement is in force, the employees cannot waive any legal right. After the termination of the 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% to 100% 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


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 has to be set up. Note that representative offices of foreign companies need to engage an agency to engage its workforce.

PRE-HIRE CHECKS

Required

Immigration compliance.

Permissible

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

IMMIGRATION

A Work Permit is required for any non-PRC-passport holder, except Taiwan, Hong Kong and Macao residents. Effective October 2016 in 10 locations, including Beijing and Shanghai, and subsequently, to be rolled out nationwide from April 2017, a grading evaluation for expatriate employees applies. Foreign workers are categorized into three types, ie high-end foreign talents, foreign professionals and foreign employees. A quota will be 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 very 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 any one workplace) so this is becoming a less attractive hiring option. The rules are more relaxed for representative offices as they cannot hire local staff directly so must 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 can be significant.

Probationary periods

The 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

No mandatory policies, but the absence of a disciplinary policy might make a termination based on misconduct difficult.

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

The written employment contract must be in Chinese. There are no statutory requirements for other documents. However, if the employment contracts/policies/other documents need to 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, with the exception of 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 (of between 150% and 300% 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 one full year or more are entitled to 5-15 days' annual leave with pay. The duration of leave for each employee is determined by reference to his/her 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, and additional maternity leave may apply, depending on location. Employees that experience a difficult childbirth get 15 extra days. For multiple births (twins, triplets, etc.), 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.

DISCRIMINATION

Characteristics protected from unlawful discrimination and harassment: age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, ethnicity, religion or belief, sex. However, the legal remedy in this respect is limited in China.

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. 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 be kept confidential and not be 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.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

No automatic transfer of employment in an associated company transfer or change of business ownership. Therefore, the previous employer will need to terminate the employee’s employment contract and the new employer will need to offer (and the employee 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)

• Who are on sick leave (for certain cumulative periods depending on the employee’s seniority), may not be unilaterally terminated

Third-party approval for termination

The trade unions should be notified of any unilateral termination.

Mass layoff rules

Yes, strict information and consultation rules apply where 20 individuals or equal to or more than 10% of the total number of employees are to be made redundant.

The employer must also notify the trade union/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 the service years after 2008 are subject to a statutory cap.

POST-TERMINATION RESTRAINTS

Those that protect the employer’s legitimate business interests can 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 can 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

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. Colombian Peso (COP $). Spanish.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

In principle, a foreign entity cannot directly engage employees in Colombia without setting up a branch or subsidiary. Proper payroll registrations are required (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

Immigration compliance.

Permissible

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

Background checks could include educational history and professional qualifications, employment history, consumer credit checks, civil litigation, criminal records, OFAC/Global Sanctions Lists, 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 the 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 (for example, regarding health conditions, pregnancy, drug use, family situations and political tendency).
IMMIGRATION

A foreign national needs a temporary visa authorizing him/her to live and work in Colombia. Work Visas in Colombia (Migrant Visa or a Visitor Visa with a work permit) are granted for 1 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 holding a Migrant Visa, it is possible to apply for a residency visa. The general rule is that the 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 his or her personal situation.

HIRING OPTIONS

Employee

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

Fixed-term agreements cannot exceed 3 years but can 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 can only be extended for periods of 1 year.

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. As from June 2019, the contracting company will be obliged to withhold the social security contributions from the contractor’s fees and make the relevant payment to the social security entities.

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 can only be hired in 3 cases:

- For occasional or sporadic activities
- For replacement of employees on vacation, maternity or sick leave
- 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 applies, the company receiving services from the agency could be considered the
employer of the agency workers and/or could be subject to monetary sanctions including a fine of up to 5,000 times the minimum monthly wage which can be imposed by the Ministry of Labor.

**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

Written employment agreements are only mandatory for fixed-term agreements or employment agreements for the duration of a project but are generally recommended.

**Probationary periods**

Employees hired under an indefinite employment agreement can be subject to a probationary period of up to 2 months. Employees hired under a fixed-term employment agreement can be subject to a probationary period of up to 1/5 of the fixed term agreed upon (without exceeding 2 months).

**Policies**

Depending on the number of employees, internal working regulations and health and safety policies will be mandatory. Internal Regulations (*Reglamento Interno de Trabajo – RIT*) are mandatory under Article 105 of Colombian Labor Code for employer with more than 5 permanent employees in commercial business, or more than 10 employees in industrial companies, or more than 20 employees in agricultural, forestry or cattle companies. Health and Safety Regulations (*Reglamento de Higiene y Seguridad Industrial*) 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 la Seguridad y Salud en el Trabajo*) is required for companies with more than 10 workers. Regardless of headcount, labor harassment and data privacy policies are mandatory. Additional corporate policies are permitted.

**Third-party approval**

No approvals required, save that Ministry of Labor authorization of the employment relationship is required if the employee is 15 to 18 years old.

**LANGUAGE REQUIREMENTS**

No statutory requirements, however Spanish is recommended as the Colombian authorities will 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 and 8 hours per day. 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 the Saturday as a day of rest.

Special shifts are permitted according to the needs of companies.

**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% 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% on top of the ordinary hourly rate. Overtime pay for night work is equivalent to 75% 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 (such as security guards) provided they stay at the workplace are excluded from the above rules regarding the maximum work day and overtime.

**Wages**

The minimum wage is determined by the Colombian Government every calendar year. The minimum wage for 2019 is COP$828,116 per month. The minimum wage is increased annually using the IPC (Consumer Price Index) as a reference.

Salaries in Colombia can 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% 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 one 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 (April, August and December) to employees who earn less than twice the minimum wage.
- **Transportation allowance (COP$97,032).** For employees who earn less than twice the minimum wage.

The ordinary salary scheme is mandatory for salaries below 13 times the monthly minimum wage (COP$10,765,508 for 2019). If the proposed salary is equal or higher to that amount, an integrated salary scheme
could be used.

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

- Severance aid (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 Colombian territory or abroad
- Bonuses of all types and natures
- In general, any and 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 13 times the minimum wage.

**Vacation**

The employee is entitled to 15 business days of vacation per year and proportional to a 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.

**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 8 business days of paid paternity leave when his spouse or significant other gives birth or he adopts a child.

**DISCRIMINATION**

Employers may not discriminate against employees or job candidates on the basis of: age, ethnic origin/race, sex, 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 and to pay monthly contributions to the Colombian pension system.

Social security contributions must be made as follows:

<table>
<thead>
<tr>
<th>Contributions</th>
<th>Rate</th>
<th>Employer</th>
<th>Employee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pension</td>
<td>16%</td>
<td>12%</td>
<td>4%</td>
</tr>
<tr>
<td>Health</td>
<td>12.5%</td>
<td>8.5%</td>
<td>4%</td>
</tr>
<tr>
<td>Solidarity pension Fund</td>
<td>1%-2%</td>
<td>N/A</td>
<td>1%-2%</td>
</tr>
<tr>
<td>Professional Risks</td>
<td>0.348% - 8.7%</td>
<td>0.348% - 8.7%</td>
<td>N/A</td>
</tr>
<tr>
<td>Payroll Taxes</td>
<td>4% or 9%</td>
<td>4% or 9%</td>
<td>N/A</td>
</tr>
</tbody>
</table>

1The 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, 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% of the employee’s compensation. If these non-salary payments exceed 40%, the difference will be subject to social security contributions.

In case of employees earning integral salary, 70% of salary will be the basis to calculate contributions to the social security system. However, if 70% of the integral salary is more than 25 times the minimum wage, contributions to the social security system will be calculated on the maximum basis of 25 times the
minimum wage.

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% of the monthly salary, but in the case of employees earning more than 16 times the minimum wage, the rate will be increased as follows: between 16 and 17 times the minimum wage, an extra 0.2%; between 17 and 18 times the minimum wage, an extra 0.4%; between 18 and 19 times the minimum wage, an extra 0.6%; between 19 to 20 times the minimum wage, an extra 0.8%; and between 20 and 25 times the minimum wage, an extra 1%. 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% of salary will be the basis for this contribution. Non-salary payments are excluded from payroll taxes. Payroll taxes do not have any ceiling.

DATA PRIVACY

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 will 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 as sensitive information).

Employees can revoke the authorization granted for the processing of their personal data and could 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 (for example, 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 re-hire. 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 will be 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)
- 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 that where the company employs at least 25 employees, the employees can establish a company level union. Only the employees can 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 must 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 will be entitled to compensation (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:

- Employees who are pregnant or on maternity leave (this protection extends to a father/domestic partner who is an employee when the mother is unemployed and included as her beneficiary with the social security authorities)
- Employees who are on health leave or have restrictions that substantially limit them to comply with their labor duties
Employees who are less than 3 years away from complying with the requirements to obtain a retirement pension

Also, union leaders cannot not be terminated unless a labor judge authorizes it and only for the just causes established in Colombian Labor Code and the company’s policies and/or procedures.

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 front of the labor authorities (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, usually the Ministry takes longer.

If the requirement for a collective dismissal (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 has to notify its employees in writing regarding the authorization requested before the Ministry of Labor.

A collective dismissal occurs when it affects:

- In a company employing between 10 and 50 employees, 30% of employees in a period of 6 months
- In a company employing between 50 and 100 employees, 20% of employees in a period of 6 months
- In a company employing between 100 and 200 employees, 15% of employees in a period of 6 months
- In a company employing between 200 and 500 employees, 9% of employees in a period of 6 months
- In a company employing between 500 and 1000 employees, 7% of employees in a period of 6 months
- In a company of more than 1000 employees, 5% of employees in a period of 6 months

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 can be effective immediately.

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 will be 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 (in 2019 COP$8,281,160), 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 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 with a fixed-term agreement, the severance would be 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, the severance would be the estimated salary owed to the employee until the project concludes, however in no case can 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 can 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 can 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 will be entitled to receive an indemnification, in addition to the final wages. Such indemnification would be calculated as follows:

- For employees on indefinite employment agreements earning less than 10 minimum legal monthly wages (in 2019 COP$8,281,160), 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 would be 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 would be the estimated salary owed to the employee until the project concludes, however in no case can 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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dzuleta@dlapipermb.com
CZECH REPUBLIC

LEGAL SYSTEM, CURRENCY, LANGUAGE


CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Foreign entities can engage employees in the Czech Republic if they have proper registrations with the competent financial authority, social security administration and the health insurance company. The registered entity must pay income tax (15%; deducted from the employee’s salary), health insurance (13.5%; 9% is paid by the employer) and social security contributions (31.5%; 25% is paid by the employer). 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 records check or information about pregnancy (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 employing 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 and fixed-term employees have the right not to be discriminated against on the basis of such status.

**Independent contractor**

Independent contractors can be engaged. Such an engagement may be subject to the risk of exposure for misclassification (so-called "illegal work").

**Agency worker**

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

**Other options**

Under Czech law, there are two other employment options based on either an "agreement on work performance" or an "agreement on work activity." Agreement on work performance – max. 300 hours per calendar year; less administratively burdensome; social and health insurance contributions payable only from certain remuneration thresholds.

Agreement on work activity - the hours worked must not exceed on average one half of regular working hours (approximately 20 hours/week); 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
- 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, maximum 6 months for so-called managerial employees.
Policies

Mandatory health and safety policy.

Third-party approval

Usually not required, trade unions approval in specific cases.

LANGUAGE REQUIREMENTS

No statutory language requirement. However, all documents must be comprehensible to the employee to whom they are addressed (i.e., language to be determined on a case-by-case basis). Works council, trade unions or other similar employees’ representatives usually require all communication to be Czech.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All.

Working hours

Standard regular working time is 40 hours/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/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, 2018, the base rate of the minimum wage is CZK 13,350 per month or CZK 79.80 an hour.

Vacation

Statutory minimum of 4 weeks (20 working days) 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 (excluding the first 3 days), the employee is entitled to salary compensation (60% of average earnings) from the employer. With effect from July 1, 2019, the employee is entitled to salary compensation also within the first 3 days. 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 for the entire duration of maternity leave (at the rate of approximately 70% of daily salary). Protection against termination.

Paternity leave of 1 week within 6 weeks after the birth of the child, paid for the entire duration of paternity leave (at the rate of approximately 70% of daily salary).

Parental leave available for women after the end of maternity leave, for men after childbirth, until the child reaches the age of 3 (duration to be determined by employees). Parental pay available until the child reaches the age of 4 up to CZK 220,000. Protection against termination.

DISCRIMINATION

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

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

BENEFITS & PENSIONS

Obligatory pension insurance scheme (21.5% paid by the employer; 6.5% paid by the employee). No additional benefits required.

DATA PRIVACY

Generally, employees must be notified of personal data processing (eg camera recordings) and, in certain specific cases, give their consent. 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 shall be 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 (significant restrictions on changing terms of employment following transfer, 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 (15% of employees are union members). Many businesses have no union or other worker representation.

TERMINATION

Grounds

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

Immediate dismissal permissible on the following grounds: criminal conduct, gross misconduct.

Employees subject to termination laws

All (except employees working based on an agreement on work performance and an agreement on work activity).

Prohibited or restricted terminations

Protection against termination for certain employees/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 20-100 employees; 10% of employees if the employer has 101–300 employees; 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

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

Statutory right to pay in lieu of notice or garden leave

Not applicable.
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 accident at work or occupational disease of the employee, 12 times average monthly earnings are 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 (ie, maximum duration of 1 year; obligatory compensation of a minimum of one half of average earnings per month; justifiability given the position of the employee; obligatory 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, its consequences removed, right to appropriate compensation (including uncapped monetary compensation). The amount of compensation is assessed with view to 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 (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 multiples of the average monthly wage by the court with view to particular circumstances of the case).

Failure to inform & consult

The State Labor Inspection Office may impose a penalty on the employer, up to CZK 200,000, for failure to inform or to consult.

CRIMINAL SANCTIONS

Illegal employment of foreigners may under limited circumstances constitute a criminal offence.

KEY CONTACTS

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DENMARK

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil Law. Member of the EU and required to implement relevant EU Directives. Danish kroner (DKK). 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 & ApS), branch offices or representation offices. Also, 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. For any occupations involving work with children under the age of 15, an employer must ask for a record that specifies whether the employee is fit to work with children. The employee must give consent before collecting the record.

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 for 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) and 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 three 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 will look at 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 protections.

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 and employed for more than 1 month are entitled to receive a written statement of employment terms (employment contract) containing all material terms and conditions of the employment, which must be issued within one 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 that the central terms of a stock option scheme 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 as far as possible take place on Sunday.

**Overtime**

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

**Wages**

In Denmark, there is no statutory regulation on national or sectoral minimum salary/wages.

However, collective agreements often contain several provisions regarding salary/wages.

**Vacation**

An employee earns 2.08 days of holiday for each month of employment in a calendar year (qualifying year), which is equivalent to 25 days' vacation in total in each full qualifying year to be taken in the subsequent holiday year commencing on 1 May in the calendar year following the qualifying year. The minimum requirements of the Holiday Act cannot be derogated from by agreement.
A new Holiday Act will come into force on September 1, 2020 with transitional provisions as from 2019.

The new Holiday Act introduces concurrent holiday, meaning that every employee can take paid holiday as soon as the holiday has been accrued. Accrued paid holiday from January 1 until August 31, 2019 can be taken from May 1 until August 31, 2020. Accrued paid holiday from September 1, 2019 to August 31, 2020 can neither be taken nor be paid to the employees. Holiday accrued in this period will be paid through a Danish public holiday fund to the employees when the employees retire or leave the Danish labor market under specific conditions.

**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 will continue paying the sickness benefit.

After a consecutive period of absence of 30 days due to sickness, the employer can 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**

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.

Employees covered by the Danish Salaried Employees Act are entitled to 50 per cent of their salary 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 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 apply to adoptive parents and same-sex parents. Note, however, that adoptive parents can only take leave if the state decides that one 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, 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 go to fund state benefits.

There is a mandatory Danish Labor Market Supplementary Pension, to which an employer pays DKK 180 per month for full-time employees, and the employees pay DKK 90 per month. There is no requirement to contribute to additional pension schemes unless this requirement is specified in a collective agreement or imposed by the employer’s internal guidelines.

**DATA PRIVACY**

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

Employees will 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 the employer relies on. 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/education and other terms of employment.

All employers with more than 35 employees are legally obliged to establish an employee forum (a works council). The forum can 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, and 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 (who have been employed for less than 12 months) or a collective agreement have no legal protection against unfair dismissal. However, 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.

**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 workers in companies which normally employ 21 - 99 persons

• a minimum of 10% of the workforce in companies which normally employ 100 - 299 persons

• a minimum of 30 workers in companies which normally employ a minimum of 300 persons

**Notice**

The length of the notice will depend on an individual agreement or collective bargaining agreement.

However, salaried employees are entitled to receive one month’s notice in the first six months of employment, and then between three and six months’ notice, based on the length of service.

An employer may dismiss an employee without notice (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 in the event of the employer’s termination of the employment.

**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 he or she holds a very 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% or 60% 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% or 24% 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 he or she holds a trusted position, eg, if he or she has 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. Pre-existing clauses are only enforceable if each of the employees whose employment opportunities are affected by the non-hire clause have been informed of the scope of the clause and have given their written consent. In addition, they must each receive compensation (50% of the remuneration during the restricted period) as stipulated in the relevant legislation.

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 will not be enforceable.

REMEDIES

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 reinstatement. However, it is very rare that the courts award reinstatement. The most common remedy in discrimination and harassment cases is financial compensation.

If discrimination is related to recruitment, the compensation ranges from DKK 10,000 - 25,000. 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 per cent 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 payment of 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 meant 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 can include a penalty in the order of DKK 100,000 – 500,000, or higher.

**CRIMINAL SANCTIONS**

Non-compliance with employment law can 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. Euro (€). Finnish and Swedish.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Foreign entities can 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/immigration requirements or 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 European Union countries, as well as nationals of countries that belong to the European Economic Area, can 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 can either be full-time or part-time. If justified reasons exist, an employment agreement could 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 a 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 can 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 principle 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 six months and it can be extended in accordance with certain limitations if the employee is on sick leave or on family leave during the probationary period. Collective agreements may provide for a shorter period. In fixed-term contracts the probationary period can be half the contract period, but in any event, no more than six 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 training 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 can 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 collective bargaining agreements in place across most sectors also specify minimum employment conditions. Employers that do not belong to an employers' association with a collective agreement 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-hours arrangements and stipulate mandatory rest periods.

Overtime

Employees are allowed to do both additional hours and overtime. Overtime requires the employee’s separate consent each time. The maximum amount of overtime during a four-month period is 138 hours, though an employee must not exceed 250 hours’ overtime in a calendar year.

According to the Working Hours Act, overtime is compensated with additional pay unless agreed to be compensated with time off. The first two hours are paid with a 50% increase on normal salary and any hours thereafter with a 100% increase.

Wages

There is no national minimum wage in Finland. Minimum wages are specified in the relevant collective agreement (if applicable). Otherwise wages must be "reasonable".

Vacation

An employee working at least 14 days or 35 hours a month is entitled to paid annual holiday time. An employee is entitled to two and a half weekdays of holiday for each full holiday credit month. However, the entitlement is two weekdays of holiday for each full holiday credit month if the employment relationship has been uninterrupted for a
period of less than one year by the end of the holiday credit year (*the period from April 1 to March 31 inclusive*). When the number of holidays is calculated, any fraction of a day is rounded up to constitute one full day of holiday. Full annual holiday entitlement covers four weeks of summer holiday and one week of winter holiday. CBAs may include more favorable vacation entitlements.

An employee working less than 14 days or 35 hours a month is entitled to 2 days of leave for each holiday credit month and to holiday compensation, which is 9 to 11.5% of pay from 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 ninth 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 one month, employees are correspondingly entitled to 50% of their pay. CBAs typically include more agreeable sick pay entitlements.

**Maternity/parental leave & pay**

The minimum period of maternity leave is 4 weeks (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 can 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.

**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. Significant restrictions on monitoring email and internet use.

From May 2018, Finland will be subject to the General Data Protection Regulation which will introduce 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 consultation obligations with 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 as a transfer of undertakings.

**EMPLOYEE REPRESENTATION**

Trade unions are prevalent across all sectors, and 70% 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 the 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 to train the person for some 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 employment is terminated on personal grounds, the majority of the employees who are eligible to vote for the person as a shop steward have to approve the termination.

Mass layoff rules

A formal and heavily sanctioned consultation process needs to 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 (e.g., 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 can be unilaterally placed on garden leave.

Severance

No statutory right to severance payment although severance may be agreed on in the employment contract. Termination agreements are also allowed for.

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, and
also the employee’s right to engage in competing operations on his or her own account for a maximum of six months when no compensation is paid and up to one year should the employee be compensated. 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.

Non-solicitation

Non-solicitation of customers or employees is not regulated by the law. However, such covenants are possible and common. According to the case law, such covenants are comparable to non-competition obligations, and 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. According to the Employment Contracts Act, an employee cannot waive mandatory minimum rights provided by the Act.

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 three years. Since 2016, the minimum amount of the indemnity has been EUR 3,570, and in connection with recruitment the maximum amount is EUR 17,840. 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 to 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 EUR 34,519 (in 2016) per each terminated employee regardless of whether the termination is unlawful. The sanction for breaching consultation 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 hasn’t complied with working hours regulations. Failure to comply with the Employment Contracts Act or with consultation obligations in connection with the transfer of an undertaking can also be sanctioned with a criminal fine.

KEY CONTACTS

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LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of the European Union (EU), so required to implement relevant EU Directives. Euro (€). French.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity can 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 25% – 28% of his or her gross monthly compensation.

The employer share amounts to approximately 45% of each employee’s gross compensation in companies with fewer than 10 employees, and approximately 50% 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 his or her work permit. As of January 2017, with some exceptions, 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 (e.g., 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. 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**

Within 2 months of commencement of employment, the employee must be provided with certain minimum terms (in principle mentioned on their pay slips). Written employment agreements are highly recommended.

Certain types of employment contracts must be established in writing, eg, fixed-term and part-time employment contracts.

**Probationary periods**

Probationary periods 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.

Trial period renewable once for 2, 3 and 4 months respectively if a CBA and the employment contract expressly provide for it.

**Policies**

Internal rules (règlement intérieur) mandatory in companies or establishments employing at least 20 employees.
draft law is currently being discussed which could make internal rules mandatory only for companies employing at least 50 employees.

Third-party approval

Implementation of the internal rules subject to consultation of staff representatives, submission to the labor inspector and communication to employees by any means.

LANGUAGE REQUIREMENTS

All employment documents must be drafted in French 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/resting days, ie resting days to compensate for days worked above the legal working time, under the conditions set by CBAs.

Overtime

Annual limit of 220 hours, unless the applicable CBA provides for a lower ceiling.

Wages

Minimum wage set at EUR1,521.22 gross per month for 2019, for a 35-hour week. In addition, minimum (higher) salaries provided by applicable CBAs.

Vacation

Subject to more favourable terms specified in a CBA, 5 weeks, ie, 25 working days (if working Monday – Friday) or 30 working days (if working Monday – Saturday).

Additional RTT/resting days may apply (see above).

Sick leave & pay

Subject to more favourable terms specified in a CBA, daily indemnity paid by the Social Security Authorities as of the 4th day of absence. For employees having 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 (1st day in case of occupational accident or sickness):
• 90% of the employee’s gross compensation for the first 30 days of absence

• 2/3 of such compensation for the next 30 days, each of these two 30-day periods 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 favourable provisions of the CBA.

Maternity leave: The minimum amount 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 11 consecutive days (18 days in case of multiple births), to be taken in principle within 4 months of the birth date.

• 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: origins, sex, customs, sexual orientation, age, family situation, pregnancy, gene characteristics, affiliation or non-affiliation, whether actual or assumed, to an ethnic group, a nation or a 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/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 can provide for additional mandatory benefits (complementary welfare coverage for all employees, supra-complementary pension plan, etc.). CBAs can also provide for minimum benefits entitlements (minimum welfare contribution rates, insurance bodies to be affiliated to, etc.).

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," ie, 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 in the employer's legal situation (e.g., sale, 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, until December 31, 2019 at the latest, there is a requirement for the impacted companies to consult with their works council and also very likely, in the case of an asset deal, with their Health, Safety and Working Conditions Committee. As of January 1, 2018, the CSE must be consulted when in place. Between 15 days and 4 months 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**

Workers’ delegates are mandatory in establishments with at least 11 employees.

A works council is mandatory in establishments with at least 50 employees.

A Health, Safety and Working Conditions Committee (CHSCT) is mandatory in establishments with at least 50 employees.

The recent Macron orders 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.
A CSE must be implemented from January 1, 2018, provided that the employee threshold (see above) has been satisfied. However, where employee representative bodies already exist within the company, the CSE may be implemented on the expiry of the existing bodies’ mandates, but by December 31, 2019 at the latest.

Union representatives may be appointed in establishments with at least 50 employees.

Since the implementation of the Macron Law in August 2015, companies with between 50 and 299 employees can set up a joint employee representative body (DUP) bringing together workers' delegates, works councils and the Health and Safety Committee, with the result that there will be a reduced number of representatives/protected employees. Although joined into a single representative body, the different members still retain their own prerogatives, but the information and consultation processes have been simplified. This option also exists in companies with more than 299 employees, subject to specific rules and a collective agreement. The DUP should be included in the CSE as from January 1, 2018 and from December 31, 2019 at the latest.

Virtually all companies are subject to industry-wide CBAs.

**TERMINATION**

**Grounds**

Termination of an indefinite-term employment contract is permissible on personal grounds (eg, misconduct, poor performance) and economic grounds (eg economic difficulties, technological changes, activity closure, reorganization to safeguard competitiveness). Economic grounds are assessed at the group level worldwide in the relevant business sector where the process commenced before September 24, 2017, and at the group level in France if it commenced after that date.

The El Khomri Law of August 2016 has specified the 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 under an indefinite-term employment contract.

**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 4 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

Termination on discriminatory 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 (+/- 10) and the number of employees within the company (+/- 50).

If fewer than 10 employees are made redundant over 30 days in a company employing at least 50 employees: information/consultation of the works council and usually also the Health and Safety Committee, or the CSE when in place, is required.

If at least 10 employees are made redundant over 30 days in a company employing at least 50 employees: the employer needs to implement an employment safeguard plan (PSE); inform/consult the works council and Health and Safety Committee, or the CSE when in place; with the procedure under the control of the Labor Administration.

In companies employing fewer than 50 employees: information/consultation of Workers' delegates (if any), or 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 less than 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 can be paid in lieu of notice. Alternatively, an employee can be paid his/her usual salary for the duration of the notice period even if not performed.

Severance

An employee with at least 1 year of seniority is entitled to a severance of 1/4th of his or her average monthly salary per year of seniority for the first 10 years (instead of 1/5 which applied before the Macron orders) and 1/3 of his or her average monthly salary per year of seniority for each following year, subject to more agreeable provisions in the applicable CBA (which are very 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% 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 his or her rights in a settlement agreement concluded with his or her employer, after termination of his or her 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 a resignation, dismissal, retirement leave, etc.) and is simply a way to obtain a waiver of claims/disputes.

A mutual termination (rupture conventionnelle) does not result in a settlement agreement/waiver.

REMEDIES

Discrimination

Any measure taken on discriminatory grounds would be held null and void and entail criminal sanctions (up to 3 years' imprisonment and a fine of up to €45,000 for the company's legal representative and €225,000 for the company as a legal entity), in addition to potential damages for the harm sustained.
Unfair dismissal

Dismissal without "real and serious" cause: if the employee has at least 2 years' seniority and the company employs at least 11 employees, the court may order his/her reinstatement in his/her former position; if either party disagrees, the employee will be awarded damages amounting to at least 6 months' salary. The company will also be ordered to reimburse up to 6 months of unemployment allowances.

If the employee has less than 2 years' seniority and/or the company employs fewer than 11 employees, he or she will be awarded damages for the harm sustained as determined by the court.

Damages to be appraised by the court based on the employee's age, length of service, circumstances of dismissal, etc. No cap applicable.

A November 2016 decree sets the indicative amount of indemnity payable for unfair dismissal, based on an employee's age, seniority and labor market situation. The application of this indicative framework is optional, unless requested by both the employer and the employee. The indicative amounts of the indemnity vary from 1 month of salary (for employees having less than one full year of seniority) to 21.5 months of salary (for employees having at least 43 years of seniority) plus one month if the employee is 50 years old or older, and one more month in case of specific challenges in finding a new job.

Note that the 6-month minimum indemnity for dismissal without real and serious cause (see above) remains, and both provisions must therefore coexist.

This indicative framework no longer applies to dismissals notified after September 24, 2017. The Macron orders provide new rules which apply to dismissals notified from this date. These rules set a mandatory scale of minimum and maximum damages to be granted in case of unfair dismissal, from which Courts cannot depart. Those 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 take into account 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 (fine of up to EUR 7,500 for the company's legal representative and EUR 37,500 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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GERMANY

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of the European Union (EU), so required to implement relevant EU Directives. Euro (€). 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 (19.825% employer and employee portion each, up to a ceiling of €6,700 gross per month for the states of the former West Germany and a ceiling of €6,150 for the states of the former East Germany) and wage tax (from 14% to 45%) to be done through payroll.

PRE-HIRE CHECKS

Required

Immigration compliance. For certain employment positions (e.g., public services, education sector, medical sector, 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 subject to proportionality requirements. Reference and education checks are common and permissible with applicant consent.

IMMIGRATION

Free movement of employees for all countries of the European Economic Area (EAA) (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. Part-time and fixed-term employees have the right not to be discriminated against due to their status.

**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 high financial risk. Work instructions and organizational integration, in particular, will jeopardize the independent contractor position.

**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 equal treatment to employees in relation to pay and other benefits terms, unless a specific collective agreement provides otherwise. As of April 1, 2017 there is a statutory maximum lease period of 18 consecutive months for an individual agency worker with the same client (amendment by collective agreements possible). On the expiration of such period, the employees must either become permanently employed with the employer or must be withdrawn by the temp agency. Also, the contractual agreement needs to be declared openly as agency work, and the exact agency worker needs to be determined before the start of agency work.

**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

Written employment agreements are common, but not mandatory, except for fixed-term contracts. A written statement of the core working conditions has to 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 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 get approval from any third party.

LANGUAGE REQUIREMENTS

No statutory requirements. Employees are often open to English agreements or policies. In case of litigation, the courts would request official translations.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All.

Working hours

48 work hours per week as average in any 6-month period. Uninterrupted minimum break of 11 hours after every work day. 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 needs to be fair; any provision incorporating overtime into overall wages needs to be related to a defined amount of overtime.

Wages

As of January 1, 2019, the new minimum wage is €9.19 gross per working hour. As of January 1, 2020, the new minimum wage will be €9.35 gross per working hour. 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.

Vacation

4 weeks per year plus local public holidays (between 9-12 days depending on the state).

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.

Maternity/parental leave & pay

14 weeks maternity leave fully paid by the employer. Parental leave paid by the state for 12 months (14 months if the other parent takes at least 2 months) with a 67% net payment rate. Further 24 months of unpaid parental leave possible with full protection of the workplace and right to return to work.
DISCRIMINATION

Statutory protection 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 above 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) entered into force in May 2018 and the complementing Federal Data Protection Act. Processing of personal data 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 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.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Automatic transfer of employment under the EU Acquired Rights Directive/Germany’s transfer of business (sec. 613a 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. Duty to inform and consult with the works council. Significant restrictions on changing terms and conditions following a transfer. 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-decision 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 any industrial action.

Co-Determination on Supervisory Board Level: Companies with a regular workforce above 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% of the German work force are members of a trade union. Trade unions are prevalent in certain sectors (manufacturing, building, transport and the public sector). Trade unions deal with employer associations or individual employers. Once represented businesses agree on a collective agreement, those 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 be for any reason. With over 10 employees, there is dismissal protection unless dismissal is justified by compelling operational reasons, conduct related reasons (in particular misconduct) or personal reasons (unable to work due to health or new job requirements).

Employees subject to termination laws

Employees with fewer than 6 months’ seniority have no unfair dismissal protection (save in certain circumstances where no seniority is required, including dismissals connected to family/pregnancy rights, works council membership or discrimination).

Restricted or prohibited terminations

Pregnant employees, mothers during maternity leave, employees on parental leave, works council members, candidates during elections, data protection officers, severely disabled employees.

Third-party approval for termination/termination documents

The works council, if established, has to be consulted about each termination. Dismissal of disabled employees, pregnant employees or employees on maternity or parental leave can 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 – 60 employees are to be made redundant within 30 days; in larger businesses, the threshold is 10% 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. As to garden leave, the right 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 leads to enforced reinstatement by the labor courts, unless the parties settle the dispute. Settlements are standard; the general formula is between 0.5 and 1.5 monthly salaries per year of service. There is no maximum threshold on settlements.

POST-TERMINATION RESTRAINTS

Need to be in writing. Those that protect the employer’s legitimate business interests can be enforced if reasonable. Garden leave is common for senior employees.

Non-competes

Typically no longer than 6-12 months, with a statutory maximum of 2 years. Compensation of 50% of the employee’s wages 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 capped at 3 times 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 €30,000 have been seen but are an extreme exception.

Unfair dismissal
Reinstatement. Therefore, most cases are settled.

Failure to inform & consult

The works council can bring legal action, which could result in administrative fines of up to €10,000.

CRIMINAL SANCTIONS

Significant frequent violation of works council information and consultation rights could lead to criminal charges; however, this rarely occurs.

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HONG KONG

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. Hong Kong dollar (HK$). English and Chinese.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity can 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 (PD(P)O), candidates are to be expressly informed of the collection, use and disclosure of any personal data in relation 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 those obligations. A candidate can be asked to have a medical examination, but only after the employer has made him or her 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 he or she was not sentenced to imprisonment of more than 3 months or a fine of more than HKD 10,000, 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 such person holds 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 can be engaged directly by the company or via a personal services company.

**Agency worker**

Typically agreements between the agency and the end-user will stipulate that the end-user is not the employer, while the agreement between the worker and the agency will stipulate that the worker is either self-employed or an employee of the agency. The placement may be for a fixed term or open-ended. The Employment Ordinance (EO) and Employment Agency Regulations regulate employment agencies.

**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

A prospective employee must be provided with certain information (wages and wage period, any end-of-year payment, and length of notice) prior to commencing employment. There is no requirement to have an employment contract in writing, 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 an employee, and to any contract of employment between such parties. Employees to whom the EO applies will be 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 of unreasonable and unlawful dismissal. Employees who are employed under a continuous contract (ie, 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 aged above 15 but under 18 and employed in an industrial undertaking), but there is a proposal in Hong Kong to introduce standard working hours and non-binding guidelines for 11 industries.

Overtime

No obligation to provide pay for overtime worked.

Wages

There is a statutory minimum wage, currently set at HK$34.50 per hour. The Hong Kong Legislative Council has approved an increase in the statutory minimum wage to HK$37.50 per hour with effect from May 1, 2019.

Vacation

Between 7 and 14 days depending on length of service. In addition, there are 12 statutory holidays. Banks, educational institutions, governmental departments and many private employers also elect to observe general holidays (rather than the minimum 12 statutory holidays). General holidays are declared to be every Sunday and 17 other days (which include the 12 statutory holidays).

Sick leave & pay

Employees in continuous employment will 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, all of the sickness days are deemed subject to be paid the sickness allowance (including the first 3 days) up to the maximum accrual (however, this 4 consecutive days requirement does not apply to any day off taken by a female employee for her pregnancy check-ups, post-confinement medical treatment or miscarriage). The 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 the 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

10 weeks’ maternity leave. This will be paid at 4/5 of the employee’s average daily wages 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, the maternity leave is unpaid. Where an employee gives birth later than expected, the employee can also 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 can 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 in addition to sickness allowance. Note that the Government has announced that a bill extending statutory maternity leave and maternity leave pay to 14 weeks will likely be introduced in 2019.

The EO grants 3 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. This has increased to 5 days, effective on January 18, 2019. Provided the employee has been in continuous employment for not less than 40 weeks at the commencement of the paternity leave, the paternity leave will be 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: sex, pregnancy, marital status, family status (i.e., having responsibility for the care of an immediate family member), disability, race and union affiliation.

BENEFITS & PENSIONS

Subject to certain exemptions (for example, for people from overseas who enter Hong Kong for employment and who holds an employment visa with a validity period of less than 13 months or are 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% of the employee's "relevant income" up to a capped maximum amount of HK$1,500 (which may be adjusted from time to time). 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 PD(P)O 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 which is necessary and not excessive for that purpose may be collected, and that individuals are informed of certain things before data is collected or used (DPP 1); that all reasonably practicable steps need to be taken to ensure that personal data is accurate and that it should only be retained for as long as necessary to fulfill its purpose (DPP 2); that personal data must not, without the prescribed consent of the job applicant or employee, be used for a purpose other than the purpose for which it was collected (DPP 3); that all reasonably practicable steps must be 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 must be taken to ensure that an individual can access information about the data user’s policies and practices in relation to the personal data, the kind of personal data about him or her 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 PD(P)O restricting 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 will be changed. Therefore, the previous employer will need to terminate the employee’s employment contract and the new employer will need to offer (and the employee 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 the terms and conditions with the previous employer, then the previous employer may be able to avoid liability for a severance payment. 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.

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
he or she was employed to do; redundancy; illegality or some other substantial reason. Unreasonable dismissal is not a criminal offence but employees will be entitled to certain statutory remedies. Presumption of unreasonable dismissal can be rebutted by showing 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 relating 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. 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; 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 him or her 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 offence with a fine up to HK$100,000 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 some shorter period where the employee has been employed for less than 12 months), or 2/3 of HK$22,500, whichever is less). Total severance payment is capped at HK$390,000. Employers are entitled to offset from the liability to pay a severance payment, any gratuity or retirement scheme payment that has been made to the employee in respect of 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 can only be rebutted by an employer proving that the employment was terminated for reasons wholly unrelated to redundancy.

**POST-TERMINATION RESTRAINTS**

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

**Non-competes**

Typically no longer than 3-6 months.

**Customer non-solicits**

Permissible in limited circumstances. Typically no longer than 6-12 months.

**Employee non-solicits**

Permissible in limited circumstances. Typically no longer than 6-12 months.

**WAIVERS**

Enforceable to waive contractual rights. While an employee can 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 to exercise his or her statutory rights.

**REMEDIES**

**Discrimination**

Uncapped compensation, which can include the claimant’s financial loss, injury to feelings compensation of between HK$7,800 and HK$390,000 (based on the Vento guidelines in the United Kingdom, 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. It is likely that these amounts will be increased to reflect increases in the guidelines in the United Kingdom (to between HK$8,000 and HK$420,000) but this has yet to be decided by the courts in Hong Kong.

**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 is able to claim reinstatement, reengagement or terminal payments. In particular, the Labor Tribunal may order compulsory reinstatement or reengagement of an employment (without securing consent of the employer) if the employee was 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 three times the employee’s average monthly wages and subject to a ceiling of HK$72,500. The employer commits an offence if he/she willfully and without reasonable excuse fails to pay the further sum.

For unreasonable and unlawful dismissal, where no order for reinstatement or reengagement has been made, the court or Labor Tribunal may also make an award of compensation (up to HK$150,000) to the employee if the Labor 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. Hungarian Forint (HUF). Hungarian.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

In order to employ employees in Hungary, the employing entity must have an established branch in Hungary. The employment of employees has to be notified to the tax authority and is subject to tax payment obligations (social security tax and vocational training contribution to be paid by the employer: 21% (but subject to review); contribution payable by the employee but deducted by the employer: 18.5%).

PRE-HIRE CHECKS

Required

Immigration compliance is required. Criminal records are also checked in relation to certain occupations, such as judges, attorneys, public servants, 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, reference) are also permitted, but may only be carried out if aiming 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 to work in Hungary.
HIRING OPTIONS

Employee

Employment can be established for either an indefinite or fixed term, as full-time or part-time employment.

Independent contractor

Independent contractors can be engaged through a company using service contracts on a civil law basis. There are several criteria which help to decide whether a specific service can be provided by an independent contractor, or if 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 have to 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 base salary and the position of the employee 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 can 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 (job description), etc.

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 it is written in.

**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 (eg, stand-by 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/weekly maximum working time, which (including overtime) on a specific working day must not exceed 12 hours and must not exceed 48 hours per working week.

The annual maximum overtime limit is 250 hours, or 300 hours if so provided by a collective agreement. However, by written agreement of the employer and the employees, the employer can 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% of base salary in case of overtime above 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 (50% plus a day off or 100%).

**Wages**

The mandatory minimum wage is HUF 149,000, from January 1, 2019. A higher minimum wage, the so-called guaranteed wage minimum of HUF195,000 (for 2019), applies to jobs requiring higher education (eg, a secondary school or vocational training).

**Vacation**

The amount of the 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 (eg, for employees with children, etc.)

**Sick leave and pay**

Employees are entitled to 15 days of sick leave per year, during which they receive 70% 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, the 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 is 24 weeks during the pregnancy period and after giving birth. Leave should be scheduled by the employer so that a maximum of four weeks' leave is taken before the planned date of childbirth. If eligible, employees receive 70% 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 the 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 (longer for disabled or sick children). During this period, the employee receives child care pay from the social security system amounting to 70% of average salary until the child reaches 2 years of age, and the minimum amount of old age pension after the 2nd birthday of the child until it reaches the age of 3 years.

**DISCRIMINATION**

Direct and indirect discrimination, victimization, unlawful segregation and harassment are prohibited.

Employers are forbidden to discriminate 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, responsibility or based on differences in the labor market conditions.

**BENEFITS & PENSIONS**

The benefits offered to an employee will usually depend on his or her seniority within the company. At manager or director level, employees are likely to be offered a company car and/or mobile telephone, etc.

It is usual to provide employees with a range of optional fringe benefits (e.g. contribution to a pension/healthcare fund, contribution to travel expenses, food vouchers, vouchers for holiday, etc.) on the basis of the respective Fringe Benefit Policy. Commonly, up to a pre-defined maximum amount, employees can select from among the options offered in line with their own preferences.

The Hungarian pension system consists of 2 pillars:

- The state pillar is the social security pension scheme
- The private pillars, which might be a privately managed pension scheme with voluntary contributions; a pension advance-saving account kept by a bank; or an employer’s pension scheme (which are non-existent 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 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 the 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 will be unfair and unlawful.

These rules do not apply to share deals or to a business transfer when the transferor is subject to a liquidation (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 a reason connected with:

- The employee’s performance
- The employee’s behavior relating to the employment
- 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
- 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, in the case of women, 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.

Notice

In case of dismissal with notice, the employment relationship is terminated at the end of a notice period, which will be 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 which, for restraints entered into after July 1, 2012, 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 since separate compensation is not required for each different type of covenant, compensation for a non-compete will also cover a customer covenant.

**Employee non-solicits**

Permissible, if included in the parties’ agreement. Compensation is payable, but since separate compensation is not required for each different type of covenant, compensation for a non-compete will also cover an employee 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, may prohibit the violating behavior and also impose a fine on the employer, the maximum amount of which is HUF 6 million by law.

Individual lawsuits can 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 will form part of the damages, subject to a maximum of 12 months’ "absence fee." Any amount earned by the employee during the period after the termination has to be deducted.

Reinstatement is also possible but in specific cases only, if the breach is considered to be serious (e.g., 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. Also the labor authorities may 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. Indian Rupee (INR). India is a multi-linguistic country with many languages and dialects across the country. The official languages of the Union Government are Hindi and English. Individual states are able to set their own official language.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign company without local registration cannot directly engage employees in India. Employers can 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. Also, proper payroll needs to 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/appropriate government authorities. For ease of doing business in India, the Government of India has permitted start-ups to submit self-certified returns and self-declaration as evidence of compliance with the provisions of the Employees State Insurance Act, 1958 (ESI Act) and Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act). Certain state governments have also come up with self-certification schemes and simplified requirements for maintenance of records and registers required under various labor laws. 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). However, the visa stamp/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. Also, 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 can 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 (foreigners) visiting India. A person who is not an Indian citizen who wishes to undertake any work in India must obtain a valid visa. There are 2 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 on shorts visits for trainings, business meetings, etc. Employment visas are granted to foreigners desiring to 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 Foreigners Regional Registration Offices (FRRO) or the Foreigners Registration Offices (FRO) within 14 days of arrival.

HIRING OPTIONS

Employee

There are 2 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 INR10,000 per month) and sales employees (other than those employed in certain notified industries such as the pharmaceutical industry) are non-workmen.

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 will have to comply with certain labor and industrial laws, such as the Industrial Disputes Act, 1947. If the employee is a non-workman, the terms and conditions of his/her employment are primarily governed by his/her 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 can be indefinite, for a temporary term, full-time or part-time.

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.

Recruitment may also be conducted through recruitment agencies, labor contractors, advertisements in newspapers and on-site recruitment at the establishment.

Independent contractor

Independent contractors can 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 he/she deems fit, as long as the timelines and the quality of deliverables are met.

Establishments tend to engage independent contractors/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" will be entitled to the same employment benefits as the regular workforce.

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 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 can recover its costs from the intermediary agency.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

No requirement for a formal written contract of employment, although generally, employers enter into written employment agreements. Some state-specific S&E Acts require employers to record certain terms of employment such as wages, designation and workhours. Recent amendments to

- the Employees Compensation Act and
- the Maternity Benefit Act 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, that requires all employers to notify an equal opportunity policy which includes details of posts that persons with disabilities can 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.

The Industrial Employment (Standing Orders) 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, 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.

A collective agreement is an understanding between trade unions, who represent the interest of the workmen, and employers. Under IDA, it is unfair for a recognised 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 will be for 3 months, but may be extended by the employer if it is not satisfied with the progress of the employee.

It is usually easier to terminate the service of a probationer as he/she does 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 can only be modified after giving 21 days' notice. In addition to employment contracts, an employer will usually have 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.

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 will at a minimum
be entitled to minimum wages as framed by the relevant state government. Additionally, an employee will be entitled to a statutory bonus, provident fund contributions, insurance coverage, maternity benefits and severance dues, if he/she meets 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 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 will apply. Generally, these statutes provide for working hour limits both on a daily and weekly basis. The normal daily hour limits range from between eight to nine 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. Under the local S&E Act, the normal working hour limits can 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.

**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 will be dictated by a variety of factors, including:

- The nature of employment
- The industry in which the employee works
- The geographic location where the employee works

The Payment of Wages Act, 1936 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 INR24,000. 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 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.
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.

Further, the Factories Act, 1948 provides that every adult worker who has worked in a factory for at least 240 days in a calendar year is entitled to one day’s leave with wages for every 20 days of work.

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). Also, the Standing Orders 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 Standing Orders 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 paternal 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 Maternity Benefit Act, 1961 (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 less than 2 surviving children are entitled to maternity leave of 26 weeks. Women with two 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 also 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 Equal Remuneration Act, 1976. 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 has to 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 can establish a local complaints committee for establishments that do not have internal complaints committees due to employing less than ten workers, or when the complaint is against the employer.

The employer is also prohibited from committing any unfair trade practices listed in the IDA, including discriminating against workmen.

The RPWD Act prohibits discrimination on the basis of a persons 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 his/her 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
- 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.

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.

- 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.

- Employees Compensation Act, 1923 provides for the payment of compensation to an employee or his family in cases of employment-related injuries, death, and temporary or permanent disability.

- Payment of Bonus Act, 1965 envisages payment of bonus to employees earning less than INR 21,000 per month.

### Pensions

Pension/s in India can be divided into three 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.

### DATA PRIVACY

**Employee records and employee access to data**

The Information Technology Act, 2000 covers data protection and violation of personal privacy. This statute safeguards against certain breaches in relation to data from computer systems, prevents unauthorised 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/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 Sensitive Information Rules enacted under the Information Technology Act, 2000.
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, 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 that information.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Indian employment law does not provide for the automatic transfer of employees. IDA 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, 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.

With respect to employees other than workmen, they will usually resign from their service and will be 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. Seven or more persons may form a union and apply to have the union 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.

IDA 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 IDA, 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" – eg, redundancy, poor performance, continued ill health, etc. – 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 IDA 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.

An employer may for economic reasons reduce the number of its workmen, provided the process as stipulated in the IDA 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
  - Other establishments

- Employed in factories/mines/plantations where the number of workmen employed in the last year is 100 or more (please note that IDA has been amended in certain states to increase this threshold to 300 employees or more)

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/plantations with less than 100 employees

- 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 (ie, 240 days) in factories/mines/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 has to 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)
- Retrenchment compensation must be paid to the workman

For "non-workmen", the steps which 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/plantations where the number of workmen employed in the last year is 100 or more (300 in some states). The IDA 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 whilst 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 one 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/plantations with less than 100 employees

• Other establishments, the employee is entitled to receive one 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/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 six months must be paid to a workman on termination of employment.

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 seniority); 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 will not be 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 can 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 his/her business elsewhere. At best, a claim for damages may succeed against the employee for breach of their contractual agreement if the employer can 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/trade and therefore is not in restraint of trade.

Employee non-solicits

Non-solicitation provisions in relation to other employees can be enforced against a former employee but the courts will 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 IDA 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 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.

Unfair dismissal

Complaints of unfair dismissal are filed before the labor courts/tribunals. The courts can grant an employee reinstatement with full back wages with continuity in service, or reinstatement without back wages, or only back wages without reinstatement, or only monetary compensation and consequential benefits.

Failure to inform & consult

The IDA 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).

**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.

**KEY CONTACTS**

Nohid Nooreyezdan  
AZB & Partners  
nohid.nooreyezdan@azbpartners.com
LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Indonesian Rupiah (IDR). 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 there to be 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 on applicants.

Permissible

Yes.

IMMIGRATION

All expatriates coming to Indonesia will need a visa and those working in the country will also need a work permit. Fines and imprisonment may be imposed on those who breach immigration requirements.

HIRING OPTIONS
Employee

Law No. 13 of 2003 (Manpower Law) divides employees into 2 categories:

Definite-term Employees: employees under a definite or fixed-term employment agreement. Also known as "contract workers." May perform work to be performed and completed at once or work which is temporary; work the completion of which is estimated to be accomplished within a period of time (in practice, not longer than 3 years); seasonal work; work that is related to a new product, new activity or additional product which is still in the experimental stage or try-out process. A foreigner may only work under a definite term of employment and cannot therefore be a permanent worker.

Indefinite-term Employees: employees who do not fall into the category of definite-term employees. Also known as "permanent workers."

Employees can be engaged on a full-time or part-time basis.

Independent contractor

Can 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

Outsourcing of labor or business services is subject to significant regulatory restrictions and requirements which, if not met, may mean that the agency worker becomes an employee of the outsourcing user.

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 7 days after the signing. Employment agreements of indefinite term can 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.

Policies

No mandatory policies, but the following clauses and policies are recommended: gifts and favors policies for compliance with anti-bribery rules; policy on conflicts of interest with external parties; policies on electronic
communications, email/Internet abuse and software copyright; policy on code of conduct; policy on data privacy and changes in personal data; clause in contemplation of natural disaster; political activities; clause on rotation and relocation (mutasi); clause on demotion; clause on suspension (without termination); clause on personal leave.

Third-party approval

Subject to the Employment Contracts section above, there is generally no requirement to lodge employment contracts or policies with, or get approval from, any third party. However, company regulations (similar to an employee handbook) and collective labor agreements are filed with and approved by the authorities.

LANGUAGE REQUIREMENTS

Written agreements must be in the Indonesian language, using the Latin alphabet. Dual-language contracts can be prepared, but the Indonesian language contract will prevail.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All (with certain exceptions in respect of expatriate employees).

Working hours

7 hours a day or 40 hours a week limit (in a 6-day week); or 8 hours a day or 40 hours a week (in a 5-day week).

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. The overtime payment rate is dependent on how many hours are worked overtime and the timing of such overtime work. Normally the overtime rate per hour is 1/173 of monthly salary. The maximum overtime is 3 hours per day and 14 hours per week.

Wages

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).

Vacation

Minimum of 12 days of paid vacation/annual leave per year after 1 year (12 months) of uninterrupted service.

Muslim employees may take special leave in order to fulfill religious duties i.e., a pilgrimage to Mecca. In practice, this entitlement only applies once after the employee has been working 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 their usual pay and the number of paid sick days is not limited.

The employee will receive 100% of his or her salary for the first 4 months of the sickness; the percentage of pay decreases thereafter. If the sickness continues after 12 months, then the employee may be terminated with severance payment. Female employees are also 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 take 3 months of fully-paid maternity leave, of which 1.5 months is to be taken in the pre-natal period and the remaining 1.5 months in the post-natal period. The timing of taking 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 his or her child's wedding, circumcision, baptism or death.

**DISCRIMINATION**

Characteristics protected from unlawful discrimination: sex, ethnicity, race, religion and political orientation.

No regulated protection from harassment for employees. Employees wishing to take action against sexual harassment in the workplace can file a claim on the basis of the civil tort law.

**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, namely:

- Public health security, which is applicable for all Indonesian citizens
- Social security, which covers occupational accident security, death security, old age security and pension 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 and old age 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.

**DATA PRIVACY**
Law No. 11 of 2008 on Electronic Information and Transactions, which recently has been 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, in which case they must be paid a stipulated severance pay, plus long service pay (if applicable) and compensation (if applicable).

- The new employer is not willing to accept the employee, in which case the employee is entitled to 2 times the stipulated severance pay, plus long service pay (if applicable) and compensation (if applicable).

- 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/made redundant and rehired by the new employer. In that case, the new employer may rehire on its own terms.

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 his or her fixed-term contract.

No protection against dismissal for employees in a business transfer. However, as with nearly all terminations of employment, Industrial Relations Court (IRC) approval is required before the employee’s employment can be terminated, and severance entitlements must be paid.

**EMPLOYEE REPRESENTATION**

Any group of at least 10 employees can 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

- Carry out other legal activities in the area of industrial relations

Criminal sanctions can be imposed on anyone, including the employer, who engages in certain anti-union activity.
TERMINATION

Grounds

Termination is possible on the following grounds but in each of these cases, IRC approval is required:

- Termination without cause (i.e., where dismissal cannot be avoided, such as in the case of a merger, a reorganization of the company, or bankruptcy of the employer; note that the employer still has to show grounds for termination)

- Termination with cause (e.g., where the employee breaches the employment contract or company regulation, or commits gross misconduct) although this is now subject to some uncertainty due to a recent constitutional court decision

- Where the employee has been unable to work for over 6 months due to legal proceedings brought against him or her (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 notices have been given.

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 his or her 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 one company

- A worker having reported the employer to the authorities alleging criminal activity by the employer
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

- Based on the provisions under the employment agreement, the company regulations or the collective labor agreement

- A worker has reported the employer to the authorities concerning the question of whether the employer has committed criminal actions

- A worker has a permanent disability condition or is ill due to a work accident or due to the employment relationship, and, according to a physician’s statement, the recovery period cannot be determined

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 order to unilaterally terminate employment, generally, employers must first undertake bipartite or tripartite negotiations as well as mediation or conciliation procedures and (if no mutual agreement is reached) by obtaining a favorable decision on the termination of employment from the IRC. Exceptions apply if the termination of employment occurs during the probation period of the worker (as long as the probation period is specifically provided in writing), due to the worker's voluntary resignation without pressure/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, 57 years is the pension age for obtaining the pension security from BPJS Ketenagakerjaan. However, a company can set a different retirement age to apply within the company, e.g. 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 require approval from the IRC (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**

Employment cannot be terminated unilaterally through notice. Some employment agreements stipulate a notice period for termination even though termination by written notice alone is not permitted and the written notice does not negate the legal requirement to perform the termination procedures as explained above under "Third-party approval for termination/termination documents."

**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 is simply a part of the calculation of severance and may be given in addition to the statutory termination package.
Employers can require employees to serve a period of garden leave in a form of suspension pending the outcome of mediation and IRC proceedings. During such period the employees are still entitled to their salary.

**Severance**

Amount and type of severance depends on the basis of the termination of employment. For example, if the termination is due to the employee’s minor misconduct, the employee is entitled to the following after a process involving the issuance of 3 written warning letters and, absent mutual agreement, the IRC termination approval process:

- **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 his or her family to the place from which they were recruited), medical and housing allowance, other benefits under the employment relationship; and other compensation amounts as determined by the IRC (if applicable)

If the termination is without cause or there is termination on retirement, the employee is entitled to 2 times 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 will allow parties to waive rights, however the operation of such waiver would not be permitted if it resulted in a violation of public policy or order, or was not being applied in good faith.
REMEDIES

Discrimination

The employee is entitled to reinstatement, if applicable, or double 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 overtime due.

KEY CONTACTS

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IRELAND

LEGAL SYSTEM, CURRENCY, LANGUAGE

Common Law. Member of the EU and required to implement relevant EU Directives. Euro (€). English.

CORporate PREsence REQUIREMENTS & PAYROLL SET-UP

A foreign entity can engage in Ireland if it has proper payroll registrations, subject to business and corporate tax planning considerations. Through the payroll, withholdings should be made for income tax (up to 40%), the Universal Social Charge (up to 8%) and Social Insurance (up to 10.95% for the employer and 4% for the employee). Self-employed independent contractors are paid gross and are responsible for their own taxation.

PRE-HIRE CHECKS

Required

Immigration compliance. Criminal record checks only for those who work with children, 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) 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 can 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 five days of starting work, an employer must provide core terms of employment in writing. Other minimum terms must be given with two months of commencement of employment.

**Probationary periods**

Permissible. No statutory limit, but three to six 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 requirement to lodge employment contract or policies with or get approval from any third-party.

**LANGUAGE REQUIREMENTS**

Not a statutory requirement, but all documents should be in English.

**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 and banded-hours contracts have been introduced for employees whose actual hours do not reflect their contracted hours.

Overtime

As long as pay overall 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 has to work on a Sunday has already been taken into account in determining pay.

Wages

The minimum wage rate is €9.80 per hour (from January 1, 2019).

Rates below this minimum are only permissible in very limited circumstances.

Vacation

There are nine 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% 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 three days’ absence. Employees may be entitled to state illness benefit after six days, but there is no other general right to receive sick pay from the employer.

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.

18 weeks unpaid parental leave to be taken before the child reaches the age of 8. This period will increase to 22 weeks from September 2019 and to 26 weeks from September 2020, with the age of the child increasing to 12. From November 2019, 2 weeks will be paid at the same rate as maternity benefit.

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/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 one parent to be the "relevant parent."
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: 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

Since May 2018, Ireland has been subject to the General Data Protection Regulation (GDPR), which introduced significant new 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 one years’ service have no protection against unfair dismissal (except in certain circumstances where no service is required, including dismissals for whistleblowing, dismissals based on discriminatory grounds or trade union membership and activities etc.).

**Restricted or prohibited terminations**

Transfer related dismissals are void unless justified on economic, technical or organisational grounds.

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

Not required.

**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 (extremely serious) misconduct. Longer notice can 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 €600 per week. More generous terms are possible and
POST-TERMINATION RESTRAINTS

Considered to be in restraint of trade and void. However, those that protect the employer's legitimate business interests can be enforced if reasonable. Need to 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 3-6 months with an absolute maximum of 12 months, depending on the circumstances. The geographical area must also be reasonable and not be too extensive.

Customer non-solicits

Permissible in specific circumstances. Typical duration is no longer than 3-6 months with an absolute maximum of 12 months, depending on the circumstances. The geographical area must also be reasonable and not be too extensive.

Employee non-solicits

Permissible. Length of restriction will depend on the circumstances.

WAIVERS

Enforceable, but employees must have had the benefit of independent legal advice prior to signing a settlement agreement waiving employment rights.

REMEDIES

Discrimination

The Workplace Relations Commission can order re-engagement, re-instatement or award compensation of up to two years' remuneration.

Unfair dismissal

The Workplace Relations Commission can order re-engagement, re-instatement or award compensation of up to two years' remuneration. Claimant is under a duty to mitigate los.

For a transfer-related dismissal, compensation is not limited to financial loss and can be punitive.

In whistleblowing dismissals, compensation can be up to five years' remuneration.

Failure to inform & consult
In theory, in the context of a mass redundancy, failure to inform and consult can amount to a criminal offense, but prosecution is rare. In the context of a business transfer, such failure can result in up to four 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 five core terms of employment within five days of them commencing employment is also a criminal offence.

KEY CONTACTS

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View bio
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 28.49 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 – 1st 5 years of employment; 14 business days – 6th year; 15 business days – 7th year; 16 business days – 8th year; 17 business days – 9th year of employment; 18 business days – 10th year; 19 business days – 11th year; 20 business days – 12th year and after. 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.
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.

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 days’ 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. Euro (€). Italian.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity can engage employees in Italy with proper payroll registrations, subject to business and corporate tax planning considerations. Withholdings for social contributions (up to approximately 30% employer portion and up to approximately 10% employee portion) and income tax (up to approximately 43%) 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 (e.g., 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 can be engaged directly by the company, provided that certain requirements are met. Freelancers can 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 clause, non-compete covenant).

Probationary periods

Permissible, with statutory limits, depending on the category and level of the employee (maximum duration is 6 months for executives the so-called dirigenti).

Policies

Permissible, 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
40 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 (operai), white-collar employees (impiegati), middle managers (quadri) and executives (dirigenti). Collective bargaining agreements set sub-levels within the category of white-collar employees. 13th or 14th salaries may be required by the applicable collective bargaining agreement.

**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 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 (e.g. shutting down of the company, just cause). In 2019, subject to and conditional on a specialist doctor’s opinion, mothers may be allowed to work until the ninth month of pregnancy. In these circumstances, mothers would therefore take the entire 5 months’ period of maternity leave after the childbirth. In 2019, fathers are obliged to take 5 days off within 5 months of their child's birth. They can 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 can 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, 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/health care 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, 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/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 can 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 (e.g., additional protection in case of transfer and dismissal).

Most companies are subject to mandatory industry-wide collective bargaining agreements.

TERMINATION

Grounds

Termination permissible on these grounds:

- Just cause, i.e., an irremediable and serious “breach of trust” (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 (breach of employee’s contractual obligation is less serious than
just cause) or objective (such as 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/subjective reasons, a special disciplinary procedure must be complied with.

Resignation and mutual consent terminations

Under Jobs Act reforms, which were effective on 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 disabled employees, 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 can be dismissed without prior involvement of the labor office. Notice to labor authorities has to 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 has to 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 can 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 (up to 3 years; 5 years for executives), and must provide an adequate compensation (usually around 25% to 50% 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” (administrative, union or judicial office), or challengeable within 6 months after termination.

**REMEDIES**

**Discrimination**

Reinstatement (or alternatively, at employee’s discretion, compensation for damages of 15 months’ pay). Additional compensation equal to salary lost from dismissal to reinstatement 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 re-hire the employee or, at its choice, pay compensation for damages (ranging from 2.5 – 10 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 reinstatement of the employee in the job (or, in the alternative, 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 reinstate an employee in the event of a discriminatory, void or oral termination (or, in the alternative, 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 reinstatement. Reinstatement (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 happen.

**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 reinstatement (or, in the alternative, 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.

Reinstatement (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**

None. Under certain circumstances, failure to fulfill a court decision can lead to criminal liability.
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JAPAN

LEGAL SYSTEM, CURRENCY, LANGUAGE


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 can be done with consent, but third parties receiving 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" (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 can also be full-time or part-time. Starting from 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 can be engaged, but care must be taken not to control or direct independent contractors, as such action can lead to the independent contractor being deemed an employee.

Agency worker

Hiring dispatched workers is popular because it can 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 can be filled by dispatched employees, control over the employee and time limits on how long a dispatched employee can 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.

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 3-6 months common. An unreasonably long probationary period could be invalid and 12 months is probably 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 will 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 need to 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 (for example, persons who are considered managers may be exempted in some cases), employers must pay minimum overtime rates as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic overtime rate</td>
<td>125% of base hourly wage</td>
</tr>
<tr>
<td>Work on a &quot;rest day&quot;*</td>
<td>135% of base hourly wage</td>
</tr>
<tr>
<td>Late-night overtime (between 10:00pm and 5:00am)</td>
<td>150% of base hourly wage</td>
</tr>
<tr>
<td>Late-night overtime on a &quot;rest day&quot;</td>
<td>160% of base hourly wage</td>
</tr>
<tr>
<td>Overtime work in excess of 60 hours/month**</td>
<td>150% of base hourly wage</td>
</tr>
<tr>
<td>Late-night overtime in excess of 60 hours/month**</td>
<td>175% 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/month.

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 two months over any six-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% of the total number of working days during that period, he or she is 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 carryover 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 child care 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 will generally receive 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% to 8.9%, depending on business which an employee engages in, on annual earnings

- **Employment Insurance**: with the exception of some businesses, the employee pays 0.4% and the employer pays 0.7% on annual earnings

- **Health Insurance/Nursing Care Insurance**: The costs are different according to prefecture. In Tokyo, 11.55% for an employee between age 40 to 64 and 9.91% for an employee under age 40 or over 64 (as of March 2017). The employer and employee equally bear the contribution

- **Employee’s Pension Insurance**: 18.182% (October 2016 - August 31, 2017), 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 not included in the transfer to the purchaser
- 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.

Two 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%, 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/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 age 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 needs to be reasonable*
- A reasonably limited geographical scope
- 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, since 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 one or two 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: reinstatement* 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 reinstatement plus statutory interest.

*An employee cannot enforce reinstatement unless his/her employer admits liability, but the employer has to continue to pay any unpaid amount until reinstatement 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. Kenya Shilling (KES or Ksh.) Swahili and English.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

An incorporated/registered entity can 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 will also be required to register for the following mandatory employer obligations:

- National Social Security Fund (NSSF)
- National Hospital Insurance Fund (NHIF)
- Pay As You Earn (PAYE) Employer Obligation and
- National Industrial Training Levy Contributor (NITA)
- National Housing Development Fund (NHDF). This is expected to come into effect on January 1, 2019

See "Benefits and pension" chapter for more details.

PRE-HIRE CHECKS

Required

- Education qualifications checks and referee follow up for all hires
- Criminal record clearance checks
- A locally-registered entity to support the application

- For an entity that already has foreign expats, whether the ratio of 1:3-7 in favour 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/business in Kenya. There are two types of work authorization, namely:

- **Entry Class D permit** – long term work authorization issued in tranches of 1 or 2 years up to a maximum of 5 years (Costs approx. US$4,500 per year)

- **Special pass** – short term work authorization issued in tranches of 1, 2 or 3 months up to a maximum of 6 months in every period of 12 months (Costs approx. US$2,000 for three months)

The Department of Immigration Services is now enforcing the 5 year limit prescribed in the law, particularly in respect of Entry Class D permits (Employment Permit). 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 post 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 skill-set and expertise is absolutely necessary.

For certain professions such as legal, architecture, medicine, engineering, scientists, journalists, psychologists, actuaries, IT specialists, pharmacists, nurses etc., a foreigner must first obtain clearance and licences from the relevant regulatory body in Kenya.

**HIRING OPTIONS**

**Employee**

Can be engaged for an 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 can 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 will be required to withhold tax on gross payments made to them at the rate of 5% for residents and citizens of the East Africa Community and 20% 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 can 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

Mandatory employment/human resources policies are disciplinary and grievance policy, sexual harassment policy, non-discrimination policy and safety and health policy. Policies must be referenced in the contract of employment for enforceability.

Policies

Mandatory employment/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 employment contract or policies with or get approval from any third party. The only exceptions are foreign contracts and employment contracts for seafarers. A foreign contract of service is one that 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
- 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. The practice is to have all official documents 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**

The normal working week should consist of not more than 52 hours of work spread over 6 days of the week and 1 whole rest day in the week.

**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, the 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 not 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**

Maternity leave – 3 months' maternity leave with full pay (no forfeiture of annual leave on account of maternity)

Paternity leave – employee is entitled to 2 weeks' paternity leave with full pay.

**DISCRIMINATION**

Direct and indirect discrimination prohibited, along with victimization and harassment. It is unlawful to discriminate on the basis of race, color, tribe, sex, religion, political opinion or affiliation, national extraction, nationality, social origin, marital status, HIV status or disability.
BENEFITS & PENSIONS

Other than providing housing or a housing allowance, contributions to the NHDF, the NSSF and NHIF statutory pension and medical contribution, the employer is not mandated to provide any further benefits.

NSSF – this is a basic social security / pension provision which 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, the contributions are KES 200 from the employer and KES 200 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% of the employee’s pensionable earning, with an equal matching contribution being made by the employer. However, this provision is yet to come into force, owing to an ongoing suit in court objecting to the new contribution rates.

NHIF – this is 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 employees’ monthly income and remit it to the fund.

NHIF deduction amount is based on the employee’s gross pay with a maximum limit of KES 1,700/- per month.

PAYE deductions on a graduated scale, up to a maximum rate of 30%.

The Industrial Training Levy is paid by the employer with respect to each employee at the rate of KES 50 per month per employee.

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% of the monthly basic salary up to a maximum of KES 5,000 per month.

Employers are required to remit the contributions by the 9th day of the following month.

This provision is expected to come into force by January 1, 2019 after the gazettement of implementing regulations.

DATA PRIVACY

Kenya does not presently have data protection legislation. There are, however, two draft bills, both titled the Data Protection Bill, 2018 which were published during 2018. Both Bills are modeled along the lines of the EU General Data Protection Regulations (GDPR).

The Constitution gives citizens the absolute right to privacy, but some restrictions may be imposed contractually, especially relating to data transfer to third parties.

Kenya has also enacted the Computer Misuse and Cyber Crimes Act, 2018 which creates various offences,
including the rights 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 favourable 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, nurses etc. They are almost unheard of 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 has to 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 one.

- Where there is in existence 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

- 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 would be deemed unfair.

**Notice**

Notice is not required where wages are paid daily. Where the wages are paid periodically, notice is given at a period equivalent to that at which the next payment would be due. Where wages are paid monthly, then a month’s 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 can be enforced if reasonable. Need to be tailored for the specific business and the risks posed by the employee.

Non-competes

Permissible during employment, but only enforceable in narrow, justifiable circumstances post-termination. Usually contractually agreed upon between the employer and employee.

Customer non-solicits

Permissible during employment, but only enforceable in narrow, justifiable circumstances post-termination. Usually contractually agreed upon between the employer and employee.

Employee non-solicits

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/discharge is legally enforceable provided it is not achieved through intimidation, coercion, inducement or other 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 not hesitate to void such waiver/discharge upon evidence that it was intended to deprive the employee of his lawful dues.

REMEDIES

Discrimination

There is no specific remedy capped on account of discrimination. The employee can, however, sue for damages.

Unfair dismissal

In the event that an employee’s contract is terminated, per statute, they are entitled to the following remedies:

a. The wages which the employee would have earned had the employee 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. Reinstate the employee and treat the employee in all respects as if the employee's employment had not been terminated

e. Re-engage the employee in work comparable to that in which the employee was employed prior to his 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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KUWAIT

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. Kuwaiti Dinar (KD). Arabic.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity cannot directly engage employees in Kuwait. It would have to set up its own legal entity in Kuwait by partnering up with a Kuwaiti partner (individual or company) which must own at least 51% shares. Once such an entity has been established it can 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 and 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 Ministry of Social Affairs and Labor Affairs (MOSAL) and immigration authorities before they can 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 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 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 can 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, only 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 would remain under the agency’s sponsorship. These are mainly for low-level jobs such as cleaning or security services, etc.

**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 MOSAL 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 MOSAL to obtain the employee’s work permit and residence visa. Strictly speaking, any contractual changes should be notified to MOSAL 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 (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, 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**

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 or for 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 KD 75 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 three quarters’ salary
• Next 10 days on half salary
• Next 10 days on quarter 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/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 are allowed to form or join a labor union, and only one labor union per sector is allowed to be formed in the country (ie, a union for engineers, 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 these grounds: by agreement, on the expiry of a fixed term contract, 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 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 a flight/air 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 his/her 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% of the severance pay as calculated above
- After 5 years' continuous service, two thirds of the severance pay as calculated above
- 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 MOSAL that the same entitlements will apply to employees who resign from limited term contracts.

The total end of service gratuity entitlement an employee can receive is capped at one and a half 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 12-24 months.

Customer non-solicits

Typically no longer than 12-24 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 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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**LUXEMBOURG**

**LEGAL SYSTEM, CURRENCY, LANGUAGE**

Civil law. Member of the European Union (EU), so required to implement relevant EU directives. Euro (€). French, German and Luxembourgish.

**CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP**

A foreign entity can engage employees in Luxembourg with proper payroll registrations, subject to several corporate and tax considerations.

Income tax and the employee's portion of the social security contributions are withheld from the remuneration paid out by the employer. The global rate of the social security contributions varies from 24.32% to 27.20% depending on the absentee rate within the company. The employee's portion varies from 12.20% to 12.45%.

**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 him or her to fill the position in question. This medical check is compulsory, irrespective of the nature of the work (ie, office, industrial or construction work, etc.). 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 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 will have to be immediately destroyed. If the job applicant is hired, the employer will only be entitled to retain the criminal records for one 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 three months will need to apply for a residence permit with authorization to work. The application must be approved by the Immigration Directorate before entering Luxembourg. However, third-country nationals who are the spouse, registered partner or child of a citizen of the European Economic Area (EEA) and Switzerland already working in Luxembourg do 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 can 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 requalified 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

Trial period may be set for a minimum of 2 weeks up to a maximum of 12 months. 3-6 months is common.

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 age 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*

40 hours per week limit on working time.

*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%. Overtime payment is not required for senior executives.

For the 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% 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% 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
  - any hour exceeding 10% 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*

€2,071.10 minimum wage per month for unqualified employees and €2,485.32 per month for qualified employees
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**

25 days per year (plus 10 days of public holidays). A draft law has recently been filed which aims to increase the holiday entitlement to 26 days and the public holiday entitlement to 11 days.

**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 - 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 - CNS).

Maternity allowances cannot be lower than the social minimum wage (gross amount of €2,071.10 per month as of August 1, 2018), and may not exceed an amount equal to 5 times the social minimum wage (gross amount of €10,355.50 per month as of August 1, 2018).

Parental leave has been recently reformed. There are two types of parental leave:

- First parental leave directly following the maternity leave
- 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 €2,071.10 and €3,451.83 per month and will be paid by the Children’s Future Fund (Caisse pour l’avenir des enfants). An employee earning less than €3,451.83 per month is entitled to an equivalent amount to replace his or her salary. An employee earning more than €3,451.83 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/supplementary social benefits in addition to the social coverage provided for by the social public scheme.

**DATA PRIVACY**

The General Data Protection Regulation (GDPR) is in force since May 25, 2018. It has been complemented by a law dated August 1, 2018.

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.

Employees as well as the Staff Delegation/the Labor and Mines Inspectorate (Inspection du Travail et des Mines or ITM) must be notified of any personal data processing.

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 have to be maintained with the new employer. All employees’ rights are maintained and transferred to the transferee.

Duty to inform and consult the employees’ representatives.

Any dismissal connected to the transfer would be unfair unless for an economic, technical or organizational
reason.

EMPLOYEE REPRESENTATION

Trade Union: 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 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 two 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 (economic ground).

Employees subject to termination laws

All.

Restricted or prohibited terminations

Employee representatives, employees who have duly notified their incapacity to work, pregnant women, employees during parental leave, etc.

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 one 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
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 can 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 he or she was 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 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 he or she leaves the employer does not exceed €55,518.22 (index 814.40).

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
- Is limited to a geographical area where the employee would be in a position to effectively compete with his or her former employer and taking 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 two types of discrimination remedies:

- Remedies stipulated by the Labor Code, which entitle the affected employee to uncapped compensation, based on his or her financial loss and moral damage

- 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 €251 and €25,000

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

Some of the 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
• 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

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 RM 1,100 per month or RM 5.29 per hour for the whole of Malaysia.

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. Although there have proposals since 2017 to increase this to 90 days, the law has yet to be amended to reflect this. Public sector employees are entitled to paid maternity leave of not less than 90 consecutive days, and some private sector employers offer paid maternity leave of up to 6 months.

There is no statutory provision for paternity leave, but some employers do offer paid paternity leave.

DISCRIMINATION

There is no statutory protection against discrimination.
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% 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% 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 required to abide by the "Last In, First Out" (LIFO) principle 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 contractual clauses in respect of confidentiality, confidential information, or trade secrets.

Employee non-solicits

Valid and enforceable only to the extent that there has been a breach of contractual clauses in respect of confidentiality, 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 en forc eable.

**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 per year of service.

**Failure to inform & consult**

No specific remedies.

**CRIMINAL SANCTIONS**

None specific to employers.

**KEY CONTACTS**

Marcus van Geyzel  
Peter Ling & van Geyzel  
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MEXICO

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Mexican Peso (MX$). 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 his or her education, health condition, finances, drug use, family situation and criminal background. Employers have broad flexibility with regard to 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, since 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 (temporary visa) authorizing such foreign national 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 can only be executed under very specific circumstances (e.g., temporary replacement of an employee on maternity leave).

**Independent contractor**

Independent contractors may be engaged. Specific rules ("judicial criteria") must be followed in order to reduce misclassification exposure.

**Agency worker**

Agency workers can be hired only for activities different from the core business of the company receiving such services. Otherwise, the company receiving the services could be considered the employer and/or could be subject of monetary sanctions.

**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

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 can 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 (that is, policies addressing training and productivity/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 in the company and the 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 always recommendable, since any Mexican authority will 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 for work day 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. Common business practice in Mexico 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 more than the number of hours in the statutory work day 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**

The minimum wage is established by geographical areas and/or for specific professions or specific fields (professional). Currently there are two geographical areas for the purposes of determining minimum wage. The minimum wage for 2019 for 43 counties in the Northern Border is MX$176.72 per day. The general minimum wage for the rest of the country is MX$102.68 per day. The minimum wage is usually increased annually in accordance to the INPC (National Consumer Price Index).

**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, the employee must obtain a medical authorization from the Mexican Social Security Institute in order to get paid for the days during 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 can 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 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 different federal social benefit programs through the Mexican Institute for Social Security (Instituto Mexicano del Seguro Social (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
- Disability pension and life insurance
- Retirement, advanced age and pension
- Child care and social benefits

Companies must set aside 10% of their taxable income for employee profit sharing, in accordance with the rules established in the Mexican Income Tax Law.

**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/employee.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

Employment transfers may be implemented via an employer substitution letter. 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 education and energy). Employers with more than 20 employees may have a union.

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 is 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 the statutory termination payments, so most terminations can be implemented either through employee resignations (with all statutory payouts, including severance), or through a mutual termination agreement signed-off in front of the labor court (again 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., an employee on maternity leave).

Third-party approval for termination/termination documents

No third-party approval is required, but it is common to have employees 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

90 days' Integrated Salary (i.e., the last annual average of the employee's income), plus 20 days' Integrated Salary for each year of services rendered, 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 even 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 even 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 even 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

Employer must pay the severance payment plus claimant's unpaid wages from the day he or she was unfairly dismissed until 1 year thereafter, plus monthly increase of 2% of the claimant's total amount awarded plus any proven unpaid benefit (such as overtime, bonus, commissions, etc.), plus 20 days' Integrated Salary for each year of services rendered (this amount is only applicable in case the employee demands his or her 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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View bio
MOROCCO

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law, inspired by French law. Moroccan Dirhams (MAD). 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 (eg social security fund — up to approximately 25% employer contribution and up to approximately 7% employee contribution) and income tax (up to 38%) to be done through payroll.

PRE-HIRE CHECKS

Required

Immigration compliance. For certain limited occupations (eg, solicitors, chartered accountants), a criminal records check is required.

Permissible

Identity and personal information checks. Education checks. Prior employment checks.

IMMIGRATION

National preference scheme. Work permits required for all foreigners with very limited exceptions.

From 1 June 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 before.

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 the newspapers
- The employer must obtain authorization from the National Agency for 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 skills, language, etc.

Foreign employees’ contracts are usually short-term: 1 or 2 years. The labor administration rarely grants work permits for a longer period, but the work permit can be renewed if the employer demonstrates that the foreign worker is essential to the company.

**HIRING OPTIONS**

**Employee**

Indefinite, fixed-term, full-time or part-time (rarely used).

**Independent contractor**

Independent contractors can be hired directly by the company. The hiring of an independent contractor may be subject to requalification as an employee. Contract drafting needs to 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
- 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 particular situations (e.g., 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 providing general mandatory provisions applicable in the company are mandatory for all companies employing more than 10 employees.

Third-party approval

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 can be tolerated in certain circumstances.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All.

Working hours

44 hour a week limit on working time. Rules on rest breaks, night work and rest periods between shifts.

Overtime

Mandatory paid at the rate of 25% if the work is performed between 6 am and 9 pm and 50% if the work is performed between 9 pm and 6 am.

Payment of double wage if employee works during a public holiday.

Wages

Minimum wage: MAD 2,570.80 (approx. €240) per month; MAD 13.46 per hour.

Vacation

1.5 days’ vacation per month of service after 6 months of service in the company. An employee who has worked
12 months in the company will be 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 year (365 days).

**Maternity/parental leave & pay**

14 weeks maternity leave. 100% of salary paid by the social security.

3 days’ paternity leave. 100% of salary payable by the employer.

**DISCRIMINATION**

Discrimination based on race, skin color, gender, religion, political opinions, social origin, and 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**

Mandatory enrollment of employees in the social security fund called *Caisse Nationale de Sécurité Sociale* which provides health insurance and pension. Employee’s contribution is approximately 7% and employer’s contribution is approximately 25%.

**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 the data processing to the national committee for data protection (*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 to the employee's representatives (if any exist in the company) but no authorization/consent required.

**EMPLOYEE REPRESENTATION**
Trade unions are active in sectors like automotive, steel industry and manufacturing.

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 up to MAD 30,000.

Companies with more than 50 permanent employees must set up:

- work committee and
- health and safety committee.

Non-compliance with this provision of the Moroccan Labor Code, may lead to a fine up to MAD 25,000.

Collective bargaining agreements are uncommon.

**TERMINATION**

**Grounds**

Termination permitted for serious misconduct or for 4 non-serious misconducts during 1 year or for economic reasons. Termination due to poor performance is very rare in Morocco and subject to very strict conditions:

- Performance objectives must be agreed upon between the employer and the employee in writing;
- Objectives must not be excessive;
- The employer needs to prove that the employee was given all the means to achieve the objectives.

Employers must summon employees for a preliminary hearing before taking a dismissal decision. The purpose of the hearing is to allow the employees to defend themselves.

Economic termination involves a different, very long and cumbersome process.

At least one 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. Minutes of the meetings 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 his decision to grant or not grant the authorization no later than two 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, more than one employee, but in practice, more than 10.

Subject to an authorization from the governor of the region, which is rarely granted in practice.

**Notice**

Variable 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 as long as 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 case, 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 the 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/waiver. That being said, 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 his rights to claim compensation.

REMEDIES

Discrimination

Damages based on the claimant’s financial losses and moral damage.

Unfair dismissal

- Indemnification for dismissal 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 he had remained at his 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 the unfair dismissal.
CRIMINAL SANCTIONS

Ranges from fines (up to €30,000) to the closure of the company.

KEY CONTACTS

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MOZAMBIQUE

LEGAL SYSTEM, CURRENCY, LANGUAGE


CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity cannot engage directly employees in Mozambique. It is necessary to establish a legal presence by means of incorporation of a company (subsidiary) or registration of a foreign commercial representation (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%, of which 3% is deducted from the employee's salary and 4% 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 can 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%.

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 30 days in the same year can apply for a short-term work permit. Hiring of foreign employees has to 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 two forms by which a foreigner may work in Mozambique, namely: communication and authorization.

- The communication may take the form of:
  - A work permit within the established quotas (10% for a company with up to 10 employees (small company); 8% for a company with more than 10 and up to 100 employees (mid-size company), and 5% 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 can 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 two further periods of up to 30 days; now it can 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

- The 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 the same period that the residence permit allows, namely 1 year. 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 will be 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 will need a work and residence permit to provide services in Mozambique and will become an employee of his or her client (corporate person) unless he or she forms his or her own company to apply for his or her 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 can only do that for nationals. They can 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 the 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
- 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
- 180 days for medium- and high-level professional employees and employees in positions of management and
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
- 15 days for uncertain period contracts which are expected to last for 90 days or more

Policies

Employers with more than 10 employees (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, and 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, besides 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

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, which is called Comissão Consultiva de Trabalho (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 2017 (MZM)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture, Livestock, Hunting and Agro Forestry (Sector 1)</td>
<td>3,642.00</td>
</tr>
<tr>
<td>Industrial and Semi-Industrial Fishing (Sector 2)</td>
<td>4,615.00</td>
</tr>
<tr>
<td>Kapenta Fishing (Sector 2)</td>
<td>3,780.00</td>
</tr>
<tr>
<td>Mining Extraction Industry (Sector 3)</td>
<td>6,963.67</td>
</tr>
<tr>
<td>Mining Industry - Quarrying and Sand Mining (sand extraction) (Sector 3)</td>
<td>5,201.60</td>
</tr>
<tr>
<td>Salt Mine (salinas) (Sector 3)</td>
<td>4,731.00</td>
</tr>
<tr>
<td>Manufacturing Industry (Sector 4)</td>
<td>5,965.00</td>
</tr>
<tr>
<td>Bakery Industry (Sector 4)</td>
<td>3,334.00</td>
</tr>
<tr>
<td>Production and Distribution of Electricity, Gas and Water (Sector 5)</td>
<td>7,286.00</td>
</tr>
<tr>
<td>Small Operators (Sector 5)</td>
<td>6,002.00</td>
</tr>
<tr>
<td>Construction (Sector 6)</td>
<td>5,436.70</td>
</tr>
<tr>
<td>Non-financial Services and Activity (Sector 7)</td>
<td>5,525.00</td>
</tr>
<tr>
<td>Financial Activity and Services (Sector 8)</td>
<td>10,400.00</td>
</tr>
<tr>
<td>Micro-finances, Micro-insurances and other Ancillary Activities (Sector 8)</td>
<td>9,240.00</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
- 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 his paid sick leave by law he will be able to have additional absences due to sickness, but those will not be paid. If the employee is often absent due to illness, the employer may refer him to the Medical Board to assess his 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, since the social security pays for the 60-day leave period at 100% 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 as 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
Employers shall promote measures that allow disabled employees 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 would for instance refurbish the workplace entrance to allow easy access for disabled 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 the 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 his private life, except when particular requirements inherent to the nature of the professional activity so require. Also, employees' personal data obtained by an employer is subject to a duty of confidentiality, and information 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, the date, the reasons, consequences thereof and the 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 would be 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 (industry-wide union), but at the company level there may be a union committee formed by employees of the company. This union will give its opinion on disciplinary proceedings, participate in salary negotiations, etc. In the absence of this union committee, the employer will have to go to the industry-wide 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 (cancellation) by either party, or rescission by either of the contracting parties based on just cause (e.g., retrenchment, disciplinary process). Cancellation of the contract can be based on just cause or for convenience. Resignation would be one of the forms that this termination can take provided that the employee meets the notice requirements as applicable.

Performance issues, depending on the particular situation, may be dealt with as misconduct (lack of compliance with work instructions) or as manifest ineptitude discovered after the probationary period, one of the forms 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/notification below in case of a mass dismissal.

**Mass layoff rules**

In respect of collective dismissal (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 required as well. 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 would start when employees and other relevant stakeholders in the process are notified of the collective dismissal and negotiation process, and the collective dismissal would occur 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 of 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 will not be entitled to severance.

In the event of contracts for indefinite duration (permanent contracts), the employee will be 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 1-7 Minimum Wages (MWs)</td>
<td>30 days for each year of service</td>
</tr>
<tr>
<td>From 8-10 MWs</td>
<td>15 days for each year of service</td>
</tr>
<tr>
<td>From 11-16 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 more favorable criteria shall apply as it benefits the employee; ie the requirements of the Labor Law in this case are regarded as minimum severance requirements.

For 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.

If the termination of the employment contract on the initiative of the employer is deemed to be unlawful by a Labor Court, the employee would be entitled to be reinstated and receive an amount equal to the remuneration payable between the date of termination and the date of effective reinstatement, up to a maximum of 6 months,
or, if reinstatement is not possible, the employer will be 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. The general rule in terms of fines is that they 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 reinstated and shall be entitled to receive an amount equal to the remuneration payable between the date of the termination and the date of effective reinstatement, subject to a maximum of 6 months. Any amounts received by the employee as severance at the time of dismissal shall be deducted. If reinstatement is not possible, the employer will be 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.

**KEY CONTACTS**

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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%, of which 2% is to be paid into the Health and Social Care fund and 1% 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 two 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% 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 one 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>
</tr>
<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. Euro (€). Dutch.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Foreign entities can 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 (eg, judges, lawyers, advocates), an applicant has to provide a recent copy proving that he or she has no criminal record that should prevent him or her from performing his or her duty (verklaring omtrent gedrag).

Permissible

Reference checks are common and permissible with applicant's consent. Other checks are only permissible in limited situations.

IMMIGRATION

Most of the nationals of the European Economic Area (EEA) and Switzerland are allowed to work in the Netherlands, although these nationals 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 can gain an indefinite employment status after a certain time and cannot be discriminated against due to their status.

Independent contractor

With regards 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 regards to the question of whether the work relationship should be considered to be an employment relation.

Under Dutch law, irrespective of the label given to a contract, an employment agreement will be deemed to exist between two parties if

- the work has to 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 upfront 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 the 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 can use Model Agreements, published on the website of the Dutch tax authorities, or submit the contract to the Dutch tax authorities to get confirmation on the qualification of the contract in a ruling. If the 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.

Agency worker

Agency workers are common and cannot be discriminated against due to their status.

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
• Pension entitlement Further required content will depend on the requirements of any applicable collective employment agreement.

**Probationary periods**

Permissible in indefinite-term contracts and fixed-term contracts for 2 years or more, for a maximum of 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**

Optional.

**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 fulltime working week usually consists of 40 hours. Collective agreements might set different full time working hours (ie, 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 22 years and older is €74.58 as of January 1, 2019.

Under the Minimum Wage Act, it is mandatory to pay a holiday allowance of 8% of the salary, unless an employee earns more than 3 times the minimum wage.

**Vacation**

Based on a full time week: 20 days/year, excluding public holidays is the statutory required minimum. It is common practice to give between 24-28 days/year.

**Sick leave & pay**

In case of occupational disability, an employer must pay at least 70% of the most recent gross salary plus holiday allowance to the employee for up to 2 years. The salary is capped at the "maximum daily wage" (€ 214,28 per day/€ 4,660.59 per year as of January 1, 2019) and must (during the first 52 weeks of illness) not be below the statutory minimum wage rate. It is common practice though, to pay 100% of full salary during the first year of illness and 70% of full salary during the second year.

**Maternity/parental leave & pay**

16 weeks maternity leave and, after that 16 weeks, a right to return to work. During the 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, during 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 during the first six months after birth, there is an additional leave entitlement of 5 weeks in case of a full time employee (additional paternity leave / partner leave). This leave is not paid by the employer. An employee who takes this additional leave is eligible for state benefits of up to 70% of the daily wage.

**DISCRIMINATION**

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**

In many industry sectors, a mandatory industry-wide 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 industry-wide 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 Netherlands are subject to the General Data Protection Regulation (GDPR), which introduces significant new obligations and onerous sanctions for employers. In general, 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 harmonising 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. 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 the (European) works council, employees on their first 2 years of sick leave, pregnant employees, 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 (the termination of employees who are pregnant/on maternity leave in that event still prohibited/restricted) or

○ The termination takes place because the pensionable age has been reached

**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
- 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 has to 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
- 15 years or more requires 4 months’ notice

It is permissible to agree a longer notice period to be given by the employee an employment contract, provided that the notice period to be given by the employer is at least double that period (ie, 2 months for the employee, 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. A transition payment will be due where the employment has lasted at least 2 years, and the amount will be based on years of service:

- 1/6 of one month’s salary (including holiday allowance and (if any) fixed end of year bonus and/or average bonus/commission of the last 3 years) for every full 6 months for the first 10 years of service and

- 1/4 of one month’s salary (including aforementioned elements) for every full 6 months over 10 years of service.

The maximum transition payment for 2019 amounts to €81,000 gross or, where an employee earns over €81,000 per annum, a maximum of one year’s salary. For employees of 50 years or older and who have been employed for 10 years or more, a temporary more favorable calculation method applies (until January 1, 2020)

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 one 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.

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 can 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 can litigate certain decisions of the company, that is, file an appeal with the Enterprise Chamber and request revocation of the company's decision.

**CRIMINAL SANCTIONS**

Criminal sanctions are not generally a concern.

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NEW ZEALAND

LEGAL SYSTEM, CURRENCY, LANGUAGE


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, except in 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. 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.

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 one 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 can 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.

Independent contractor

Independent contractors can 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 can engage casual employees on an 'as-needed' basis.

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, any other matters agreed on, such as trial periods, probationary arrangements, or availability provisions, the nature of the employment if the employment is fixed-term etc.

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.

Otherwise, employers can include probationary periods in their employment agreements. However, during a probationary period, the employer must still undertake a fair process before dismissing an employee.

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 any 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.

Wages

The National adult minimum wage rate for employees aged 16 years or older is NZ$16.50 per hour before tax. This will increase to NZ$17.70 per hour on April 1, 2019.

Vacation

4 weeks’ paid annual leave per year.

Sick leave and pay

Employees are entitled to 5 days’ sick leave per year after 6 months of current continuous employment.

Maternity/parental leave and pay

Eligible mothers are entitled to:

- 22 weeks of paid maternity leave. This leave is paid for employees/self-employed. Payment is made by the government, not by employers. This will increase to 26 weeks on July 1, 2020.
- 52 weeks of extended leave (unpaid) in total (includes paid maternity leave)
- 10 days of special leave (unpaid)

Eligible fathers are entitled to:

- 2 weeks of paternity leave (unpaid)
• The partner's parental leave if they are assuming care of the child

**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.

**BENEFITS & PENSIONS**

New Zealand has an optional superannuation saving scheme, "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 1993 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 can 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.
TERMINATION

Grounds

Termination can be brought about by mutual agreement, expiry of a fixed-term contract, termination by the employer for cause (with or without notice) or termination (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. An employer needs to 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. Generally, this is 1 month.

Statutory right to pay in lieu of notice or garden leave

Employers can pay in lieu of notice if stipulated in the employment agreement. No right to 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.

Customer non-solicits
Permissible. 

Employee non-solicits

Permissible.

**WAIVERS**

Statutory rights cannot be waived; however, contractual or common law rights can 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.

Nigerian Naira (NGN).

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% of an employee’s monthly salary as pension
- Personal income tax (pay-as-you-earn)
- 2.5% of the monthly salary of an employee with a basic minimum salary of NGN3,000.00 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 are accepted in Nigeria. In practice, the prospective employee's consent is sought before such checks are carried out.

**IMMIGRATION**

Expatriate Quota must be obtained by the employer from the Ministry of Interior Affairs to employ expatriates for up to 12 (twelve) 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 Visa allows an expatriate to enter into Nigeria to provide technical services for a short term (usually between 1 and 3 months). Subject to Regularization visa: entry visa issued by the Nigeria Mission in the expatriate's country of residence or domicile in the last 6 months.

Combined Expatriate’s Resident Permit and Alien’s Card (Cerpac) comprises the resident permit (green card) and the alien’s movement card (brown card). It is required for expatriates resident or working in Nigeria.

Cerpac provides a multiple re-entry visa facility to holders, throughout the validity its 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.

**HIRING OPTIONS**

**Employee**

Indefinite, fixed-term, full-time, part-time or casual.

**Independent contractor**

Independent contractors can 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/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/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 lodge 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 usually such employment rights are stated in the employee’s contract of employment.

Working hours

Normal hours of work in the contract of employment 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 N18,000.00 per month. The current National Minimum Wage is undergoing a review by the Federal Government and organized labor and there is a potential for an upward review in the near future.

**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% 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% 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% of the monthly payroll of all the employees.

**DATA PRIVACY**

The National Information Technology Development Agency has published Data Protection Guidelines, 2019 which safeguard the rights of natural persons to data privacy.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**
No legislation on transaction/business transfer except if provided in the employment contract. Where the contract of employment does not provide for transfer of undertaking, consent of the employees is required for the transfer of the employment. Termination and rehire is also an alternative.

**EMPLOYEE REPRESENTATION**

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 non-enforceable 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 the 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 will need to 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. Also, 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**

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.
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.

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 his / her 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.

Notice

No statutory requirement, but the employment contract provides for the notice period. In practice, the notice period is typically one month, and more for senior employees.

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 can decide to pay in lieu of notice. Garden leave is not provided for under the Nigerian Law and also not a common practice in Nigeria, but some employment contracts provide for same.

Severance

Severance pay is usually subject to the provisions of the employment contract or collective agreement. However, for manual and clerical workers, 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.

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/executive-level positions, but 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.

**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.

**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.

**KEY CONTACTS**

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NORWAY

LEGAL SYSTEM, CURRENCY, LANGUAGE


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 will be 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%. 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, 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 three months. If the employee is going to stay in Norway for more than three 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 have been 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 six 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 have to be sufficiently independent of the company in order not to be regarded as employees. This includes, eg, 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 has to pay an overtime supplement of at least 40% of salary for work in excess of agreed working hours (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 one 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. 10 weeks is reserved for the
father. Allowance from the government will be paid either for a period of 47 weeks at a full daily rate or 59 weeks at a reduced daily rate. 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, and ethical and cultural orientation.

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 one 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. No longer than 12 months. Must be in writing.

Customer non-solicits

Permissible. Length of restriction will depend on the circumstances.

Employee non-solicits

Permissible between employee and employer. Generally not permissible between employers, except for up to six 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 reinstated 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 three months, or both. In particularly aggravating circumstances, the penalty may be up to two years’ imprisonment. This does not apply to breach of provisions regarding appointment and termination.

KEY CONTACTS

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OMAN

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. Omani Rial (OMR). 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 an individual.

Permissible

Generally, employers in Oman 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 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
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 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 would 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 working hours, leave, termination, etc. 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 (those under the age of 18) and women.

Working hours

The Labor Law guarantees workers 2 days off per week, compared to the previous 1 day minimum. To achieve this, the maximum working hours were reduced from 48 hours per week to 45 per week, spread over 5 days.

During Ramadan, the maximum working hours per week for Muslim employees are 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% for extra hours worked during the working day
- 50% 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% pay, weeks 5 and 6 at 50% full pay and weeks 7 to 10 at 25% 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 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 with 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 will automatically transfer to the purchaser; however, expatriate employees will not.

**EMPLOYEE REPRESENTATION**

Yes, this is permitted under the Labor Law.

**TERMINATION**

**Grounds**

Termination possible on these 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 or absence has ended.

It is also not permissible to dismiss a female employee by reason of illness which is proved by a medical certificate to result 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 a flight/air 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 his/her 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
- 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 as to permit him or her 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, provided that such agreement shall not be valid unless it is:
  - Limited in time
  - Restricted as to place
  - 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 it terminates the contract without justification (ie, 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 agreement if it commits any act which justifies the employee's resignation in response (ie 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 can 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.

**KEY CONTACTS**

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LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law, Philippine Peso (PhP), 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 with the Philippine Social Security System (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 will 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 has rendered at least one year of service, whether such service is continuous or interrupted, with respect to the activity in which he or she is 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 his or her own account and under his or her own responsibility, according to his or her 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 his or her business.

**Agency worker**

The law prohibits labor-only arrangements, *i.e.*, a relationship where the agency refers employees and the principal merely pays the agency/contractor the salaries of the employees. In a labor-only arrangement, the principal will be 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 fine.

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 will 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 his or her rest day, the employee shall be entitled to an additional pay of 30% 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 as 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
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 or miscarriage shall be paid a daily maternity benefit equivalent to 100% of her average daily salary credit for 60 days or 78 days in case of caesarean delivery.

**Paternity leave**

A married male employee is permitted not to report for work for 7 days but 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 wife 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 (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 gynaecological disorders, provided that she has rendered continuous aggregate employment service of at least 6 months for 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, that a woman employee shall not get married or to stipulate expressly or tacitly that upon getting married, a woman employee shall be deemed resigned or separated. *(Labor Code of the Philippines, Art.*
Sexual harassment is also prohibited. *(Anti-Sexual Harassment Act of 1995)*

**Against persons with disability**

No disabled persons shall be denied access to opportunities for suitable employment. A qualified disabled employee 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 one 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 birth date 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
- as financial assistance as an act of social justice
- in lieu of reinstatement in illegal dismissal cases where the employee is ordered reinstated but
reinstatement 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 his or her 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 can agree to assume the employment agreements, which requires employee consent. Alternatively, employees can 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 reinstatement 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 his or her employer or representative in connection with his or her work
- Gross and habitual neglect of duties by an employee
- Fraud or willful breach by an employee of trust reposed in him or her by the employer or its duly authorized representative
- Commission of a crime or offense by an employee against the person of his or her employer or any immediate member of his or her family or his or her duly authorized representative
- Other causes analogous to the foregoing

The following are the authorized causes of termination:

- Installation of labor-saving device or automation
- Redundancy
- Retrenchment (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, would be a valid ground for termination if the following are present:

- Retrenchment must be 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 must be proven by sufficient and convincing evidence

• Retrenchment must be 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 himself or herself with the assistance of the employee’s representative if desired

• A second 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 will be 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 as 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 as 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**

Employer and employee are free to stipulate in an employment contract prohibiting the employee within a certain period from and after termination of his or her 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 likewise 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 against prohibited by 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
Failure to inform & consult

In reference to employee termination proceedings, failure to comply with procedural due process of notice and hearing would allow 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 reinstatement 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. Polish zloty (PLN). Polish.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity can engage employees in Poland without having a local corporate presence. Engaging a Polish employee who will perform work in Poland requires registration with the social security authorities. Income of this Polish employee will be subject to Polish income tax and social security contributions. In order to conduct business activities in Poland, a foreign entity may need to establish a local corporate presence (branch or representative office) in Poland, registered in the National Court Register.

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 where a medical certificate was issued during a period of previous employment in the same position.

Permissible

Certain limited personal data can be requested from the candidate, as specified by the Polish Labor Code. Additional information (e.g., information on criminal convictions) can be requested only if the obligation to provide this information is provided for in 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 will be deemed to be 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.

**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.

An employment contract must include basic employment information such as:

- The parties to the employment contract
- The type of employment contract
- The date of concluding the employment contract
- The conditions of work and pay, including in particular the type of work (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 can precede other types of employment contracts. A probationary period cannot be longer than three 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 can 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 first 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 (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 provides also 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 is able to specify different times for the working day to start or can let 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 (e.g., pregnant employees).

The overtime work can be compensated by paying an allowance (in addition to a standard remuneration) in the amount specified by the Polish Labor Code (50% or 100% of remuneration) or granting time off from work.

Wages

Statutory minimum wage whose amount is established each year – for 2019 the minimum wage amounts to PLN 2,250 – and PLN 14.70 per hour for individuals employed under a contract of mandate/a contract to provide services which are civil law agreements.

Vacation

20 or 26 days (after 10 years) of holiday leave depending on the total years of service. The years of service include 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. Additionally, 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 his/her employer in the amount of 80% of remuneration. Starting from the 34th (15th for employees over 50) day of incapacity to work, an employee is entitled to sickness benefit paid by the Social Insurance Institution (ZUS). If an employer has at least 21 insured individuals on 30 November 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% 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 20-37 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 can apply for 32 weeks’ parental leave (or 34 weeks in the case of a multiple birth). This leave can be used by both parents at the same time and can be divided into no more than 4 parts.

An employee engaged for at least 6 months is entitled to child-care 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 can be combined with employment or training by the current or another employer; parents can 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 his/her working time to no less than 1/2 of the full amount of working time within the time during which he/she 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 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. On January 1, 2019, a new form of saving was introduced into the Polish legal system that allows the accumulation of additional funds for retirement into employee pension plans. Contributions to employee pension plans will be financed by the employer (1.5% of the remuneration) and by the employee (2% of the remuneration) – with limited options to increase these amounts. The introduction of employee pension schemes will take place in several phases. Initially, the obligation to create a scheme will apply only to employers with at least 250 employees, but the ultimate target is that all employers in Poland will be obliged to create a scheme.

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 no specific regulations on the protection of employees’ privacy at work; however, statutory rules forbid the secret monitoring of employees and there are specific rules to introduce camera monitoring. 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 type of data that can 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 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 (trade unions and works council). A transferred employee has
the right to terminate his/her 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 was 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 this 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 un-associated 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 the trade union leaders enjoy special protection against dismissal.

**Works council**

Employees' representative body elected by the employees that 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 movie 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 can 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 (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 employee’s life situation or role he/she holds).

**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 (employees who will reach retirement age in not more than 4 years), life situation (eg, due to pregnancy, when using maternity leave, paternity leave, parental leave and childcare leave, during sick leave, holiday leave) or function they hold (eg, trade union leaders, works council members).

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

In case of the protected employees, the restriction on termination may require the employer to seek consent of certain bodies for the termination of employment (eg, 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; 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 his/her 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% 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 can 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 can 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: 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 can be shortened up to 1 month and the employee is entitled to compensation equal to salary for the outstanding notice period.

Garden leave: permissible for the period of notice, provided that an employee retains the right to his/her 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 1-3-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 (eg, senior executives).

**Non-competes**

Parties to an employment relationship can 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% 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 instalments.

**Customer non-solicits**

Statutory prohibition to induce the employer’s clients to terminate, not to fulfil or improperly fulfil their contractual duties with an aim for the inducing person to gain benefits for him/herself 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 his/her contractual duties with the aim for the inducing person to gain benefits for him/herself 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 can claim compensation of at least the statutory minimum wage.

**Unfair dismissal**

In case of unlawful or unjustified termination with or without notice, an employee can claim reinstatement to work on the previous conditions or compensation in the limited amount specified in the statutory regulations.

In case of reinstatement, an employee can 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 can claim compensation in limited amount specified by law. In the case of the reinstatement 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 PLN 1,000 to 30,000 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. Euro (€). Portuguese.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity can 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.

PRE-HIRE CHECKS

Required

Immigration compliance. For certain roles (eg, security guards, 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 his/her 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 request.
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 (such as a contract to cover absence) contract (subject to strict limitations), part-time contract, telework contract, intermittent work contract (work during a part of the year) and contract under service commission regime.

Part-time, fixed-term and open-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 can only be engaged to fulfill a temporary need for work. The agency work contract can be renewed without limitation, provided that the total duration of the engagement shall not exceed the legal maximum (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 contract, part-time contract, telework contract, intermittent work contract, agency work contract and contract under service commission regime. A written statement of the core working conditions has to 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 agreement (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.

Although not mandatory, other company policies can be adopted and implemented by the employer. A company policy may take the form of an internal regulation (regulamento interno), in which case it has to be posted at company’s premises as such.

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), since, 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 his 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 daily normal working period when performed on a rest day or on a public holiday, and 150 (medium-sized and large-sized companies) or 175 (small-sized companies) hours per year.

Overtime must be compensated with additional payment (increase of hourly rates). Work on normal working days = 25% increase for the first hour and 37.5% increase for additional hours; work on public holidays and on rest days = 50% 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% and 75% of the average last remuneration) for up to 3 years.

Maternity/parental leave & pay

120 to 150 days (deviations in case of multiple births) of initial parental paid leave. It can be shared between the mother and father, but the mother must take at least 6 weeks after birth. 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 (currently varies between 80% and 100% of the average last remuneration).

The father must take paid parental leave of 15 working days after birth, and subsequently may take an additional 10 working days in addition to the parental paid leave which may be shared. 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.

**BENEFITS & PENSIONS**

Both employer and employee have to pay contributions to the Social Security in Portugal to cover different protections (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 the Social Security every month.

Current general rates are 11% of the gross wage for the employee and 23.75% for the employer.

Employees with a minimum contributory period (15 years) qualify for a retirement pension at age 66 and 5 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/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. 67/98 governs Portuguese data privacy and determines how employers collect, use, disclose, store and give access to "personal information."

Various restrictions, notification or authorization requirements towards the Portuguese data protection authority (CNPD). Data transfers outside of the EU are subject to additional requirements. Significant restriction on monitoring Internet and e-mail use.

Except if required for the execution of the employment contract, employees generally must give consent to personal data processing. Employees have the right to be informed about the use of their personal data.

Since May 2018, Portugal is subject to the General Data Protection Regulation, which will introduced significant new obligations and onerous sanctions for employers. A local privacy law under GDPR has not been enacted yet.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

Automatic transfer under the EU Acquired Rights Directive and the Portuguese Labor Code in case of change of employer (e.g., sale of an independent stand-alone business unit, merger or spin-off). 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 (e.g., change of work center, 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 (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 can be more than one 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 (such as automobile, chemical, transportation, automobile parts production, pharmaceutical, civil construction, metallurgy, etc.).

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/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 service commission regime (a particular type of contract for high level employees which provides flexibility for termination - not common).

Other termination causes: mutual agreement, termination by the employee (termination with notice or constructive dismissal with just cause), expiration (fixed-term and open-term contracts, 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 CITE (Commission for Equality in Labor and Employment) and CITE does not oppose the dismissal; otherwise, the employer has to 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 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 one or more of the following reasons:

- A definitive closure of the organization
- Closure of one or more departments of the organization
- Personnel reduction based on structural, technological or market reasons

Collective dismissal rules will be 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.

Notice periods in case of term contracts:

• Fixed term contracts: 15 days for the employer and 8 days for the employee.
• Open-term contracts (eg, 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 (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%) paid by a fund (FCT) administered by Social Security, to which the employer has to 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 can be enforced, provided that the activity carried on by the employee may cause a potential loss to the employer.

These types of obligations can be included in the initial employment contract, or can 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 (activity, 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)

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% and 80% 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 above-mentioned rules.

Customer non-solicits

Permissible under the above-mentioned rules.

Employee non-solicits

Permissible under the above-mentioned 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 can 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)
- 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.

Generally, legal persons will be 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).

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 his 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 a prescribed category of conditions foreign nationals will need to 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.

Recent amendments to the Sponsorship Law in Qatar have been introduced with the intention of making it easier for expatriate workers leave the country. The new law came into effect on September 5, 2018, being one day from the date of its official publication in Qatar’s official gazette. The new law abolished the requirement for an expatriate employee to obtain an exit permit from his / her sponsor of residence prior to leaving the country. There are certain exceptions to this rule. However, given this law’s recent enactment, it remains to be seen how this law will be implemented by the authorities in practice. Under one of the provisions of the new law, workers will be given a route of appeal in the event that their sponsor objects to the worker leaving the country.
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, but the individual would remain under agency sponsorship.

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**

At present, there is no minimum wage to be paid to employees in Qatar. Anecdotally, we understand this is currently being looked into by the Qatari authorities.

**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 two 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 new 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. Some of the key features of the new law are:

- 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 seven 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

No.

Notice

A minimum of 1 month's written notice where the employee is paid annually or monthly and has less than 5 years of service increasing to a minimum of 2 months' written notice where the employee has more than 5 years' service. Different notice periods apply for employees paid more frequently.

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 2 years), geographical scope 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. 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.

KEY CONTACTS

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ROMANIA

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of the European Union (EU), so required to implement relevant EU Directives. Romanian Leu (RON). 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 and also 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 with no Romanian presence from executing individual employment agreements directly with Romanian individuals. Thus, a foreign entity can engage staff in Romania, subject to business, corporate and tax considerations.

PRE-HIRE CHECKS

Required

A request for a medical certificate/check can 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 needs to 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 EEA (European Economic Area) 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 and periodically communicated to the relevant labor authorities).

Probationary periods

Only one 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, amongst 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, employee professional evaluation criteria and procedures, etc. Employers may also unilaterally implement other work-related rules (such as dress code, employee-specific obligations, etc.) via their internal regulations or as separate internal policies/procedures.

Third-party approval

As a general rule, there is no requirement to lodge employment policies with or get approval from any third-party either in respect of any policies or in respect of execution of individual employment agreements. 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

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/week, and, as a rule, this is evenly distributed, so 8 hours/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/week, including overtime. No opt-out is possible; however, there are certain exceptions under which the working time may exceed 48 hours/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 to be overtime.

Overtime performed in normal working days needs to be compensated with:

- Paid time off granted within the next 60 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 (on top of the monthly salary due for the respective month)
of 75% of the hourly base salary for each overtime hour

Also, if overtime is performed during weekly rest periods and/or days of legal/public holiday, different (higher) compensation must be paid.

**Wages**

As of January 1, 2019, the minimum gross base monthly salary at national level is, as a rule, set at RON 2,080 (approximately €443) for employees working full-time hours. However, there are certain exceptions:

- The amount of the minimum base monthly gross salary at national level for employees (i) occupying positions requiring higher-level studies and (ii) having at least 1 year’s service within the position requiring higher-level studies is RON 2,350 (approximately €500) and

- Exceptionally, for the period between January 1, 2019 and December 31, 2019, and only for the construction sector, the minimum base monthly gross salary at national level is RON 3,000 (approximately €639)

**Vacation**

The minimum vacation is 20 working days (in practice, based on the old legislation, the expectation is 21 working days). This does not include the 15 public holidays.

**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 (but 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% of the average salary of the employee for the last 6 months out of a 12-month representative contribution period.

**Maternity/parental leave & pay**

Female employees benefit from 126 days of maternity leave, which can 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 can be extended once to 15 working days if the father has undertaken a child-care 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 needs to be taken by the other parent.

**DISCRIMINATION**

Direct and indirect discrimination is prohibited, along with victimization and harassment (including sexual harassment and psychological harassment). Employers have an obligation to include provisions prohibiting
discrimination in their internal regulations.

The main characteristics protected from unlawful discrimination and harassment: race, nationality, ethnic background, language, religion, social category, beliefs, age, disability, sex or sexual orientation, etc.

**BENEFITS & PENSIONS**

Currently, there are no general benefits applicable by law to all employees, but some that apply only in specific cases (such as employees working under a mobility clause).

In Romania, occupational pensions are not expressly regulated, and 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 (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.

**DATA PRIVACY**

Employees must be informed of personal data processing (and in certain limited cases, must give consent).

Since from 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/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 representatives
• Trade unions

Works councils are not expressly regulated unless there is a European works council.

Collective bargaining agreements may be executed:

• At company level (negotiated between the employer and the competent employee representative body)
• At group company level
• At sector (industry) level – here, 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 (redundancy)
  ○ For reasons related to the individual employee, namely:
    ▪ Poor performance
    ▪ Serious or repeated misconduct (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 (medical leave), during pregnancy (provided that the employer acknowledged the pregnancy before issuing the dismissal decision), during maternity leave, child-raising leave or during vacation/annual leave, etc.

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, so, for example, the rules will 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 his or her (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 approx. €12,000.

CRIMINAL SANCTIONS

Infringement of health and safety rules can lead to criminal sanctions (where human life has potentially been put in jeopardy). Criminal liability is also triggered in cases of repeated breach of the obligation to pay minimum salary or repeated refusal to permit labor inspectors access to any of the company’s locations, or to provide them with requested documentation, etc.

KEY CONTACTS

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RUSSIA

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Russian Ruble (RUB). Russian.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity cannot directly engage employees in Russia, and can only operate in Russia after corporate registration. Personal income tax to be withheld through payroll.

PRE-HIRE CHECKS

Required

Immigration compliance, military compliance (with regard to a person’s responsibility to serve in the military). In certain situations, criminal record check.

Permissible

Criminal and credit reference checks are only permissible for specific roles (e.g., certain finance positions, educational institutions) and 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, Kyrgyz Republic and the Republic of Armenia) may be employed and/or actually commence working in Russia, provided that they obtain respective migration documents (work permits, patents). 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 and it may only be concluded in the circumstances specifically provided for by Article 59 of the Labor Code.

Independent contractor

Independent contractors can be engaged directly by the company. There are severe penalties if a services agreement is re-qualified as a labor agreement.

Agency worker

No statutory grounds, but generally permissible in practice. A bill to ban the loan of labor (secondments) in certain circumstances became effective on January 1, 2016. Under the new law secondments are only permitted:

- By private (accredited) employment agencies
- Between related persons, including affiliates or parties to shareholders’ agreements

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

An employment contract must be made in writing and specify the employment commencement day.

Probationary periods

Permissible. 3 months for newly hired employees and 6 months for employees hired for certain executive positions.

Policies

Written internal policies, such as an internal labor regulation and a personal data protection policy, are mandatory. The employer may also adopt other policies, such as a remuneration policy, confidential information protection policy, etc.

Third-party approval

Internal labor regulation must be approved by employees’ representatives and trade unions (if any).

LANGUAGE REQUIREMENTS

No statutory requirements, but all documents should be in Russian (or bilingual) so that they can be presented to the Russian authorities without translation if necessary.
MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All.

Working hours

A standard working week is 40 hours (in some exceptional cases, decreased by the Labor Code).

Overtime

In general, any time worked over 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% of the regular hourly rate for the first 2 hours of overtime worked during one day, and at a rate of 200% 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 over-time 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.

Wages

The law sets the minimum monthly earnings, which could be different in different regions. As of January 1, 2019 the minimum monthly earnings must be at least RUB 11,280, whilst in Moscow, the minimum monthly salary has been RUB 18,781 since January 1, 2019.

Vacation

At least 28 calendar days per year of employment.

Sick leave & pay

Employees are entitled to receive statutory sick leave compensation, which 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 will vary 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% 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 only required to submit a medical certificate for absence after their recovery and return to work. Generally, an employer cannot terminate an employee's employment while the employee is on sick leave.

Maternity/parental leave & pay
Paid maternity leave 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 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 employer, but will be reimbursed by the Social Insurance Fund.

A person caring for a child, be it the child's mother, father, or any relative who is actually raising it, may request to take childcare leave until the child is three years old. The amount of child leave allowance is established by federal law and is subject to annual review. The allowance shall be reimbursed by the Social Insurance Fund. The employee retains the right to return to work during the entire period of the maternity or childcare leave, and the full leave period is included when calculating the employee’s term of service.

DISCRIMINATION

Characteristics protected from unlawful discrimination and harassment: age, place of residence, disability, gender reassignment, family status, wealth, occupation, pregnancy or maternity, race, nationality, language, origin, religion or belief, gender, sexual orientation, etc.

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 (eg, transferring personal data to third parties including cross-border transfers).

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Employees need to consent to a transfer of employment, and generally cannot be terminated because of the transfer. It is possible to terminate the agreements with the general director, his/her deputy and chief accountant no later than 3 months after a change of the owner in certain instances.

EMPLOYEE REPRESENTATION

Employees can 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 trade union, elect the union leader and approve the regulations. It is not necessary to register the trade union, as the trade union is deemed to have been created upon the adoption of all of the above decisions. There are no works councils.

TERMINATION
Grounds

The Labor Code sets out specific circumstances for which an employer may terminate the employment of one of its employees, which include, but are not limited to, the following:

- The employee's repeated failure to perform his or her employment duties without a justifiable reason (if the employee was lawfully disciplined during the preceding 12 months)
- Dismissal due to redundancy
- 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, amongst 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).

Mass layoff rules

Yes, 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; as well as in case of dismissal of employees amounting to 1% of the total number of employees in connection with the liquidation of the organization or staff reduction within 30 calendar days in areas with less than 5,000 working persons in total. This rule may differ in different regions and industries, depending on 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 (eg, 2 months' notice for redundancy). Not required for dismissals due to gross misconduct as defined by law.

Statutory right to pay in lieu of notice or garden leave

No.

Severance
Payments to redundant employees of at least 1 month’s average earnings (Average Pay). Additionally, an employee is also entitled to one more payment of Average Pay, if they remain unemployed within 2 months after the termination date. They are also eligible for one more payment of Average Pay in the event they are not employed after the expiry of 3 months from the termination date, provided that they registered with the Russian Employment Service within 2 weeks of the termination date.

A payment in the amount of at least 3 times Average Pay in the event of removal and termination 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 damage is legally uncapped. However, Russian courts tend not to accept claims for damages exceeding a certain maximum.

**Unfair dismissal**

Reinstatement of employment and compensation for lost salary, plus compensation for moral damage (see above).

**Failure to inform & consult**

Violations of labor law could generally result in a fine from between RUB 30,000 and RUB 50,000 for the company (RUB 50,000 to RUB 70,000 for repeated failure); and from between RUB 1,000 and RUB 5,000 for the company's officials (from RUB 10,000 to RUB 20,000 or disqualification for repeated failure).

Reinstatement of an employee is possible.
CRIMINAL SANCTIONS

Criminal sanctions are not generally a concern for employers acting as legal entities.

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SAUDI ARABIA

LEGAL SYSTEM, CURRENCY, LANGUAGE

Sharia law. Member of the Gulf Coordination Council (GCC), therefore required to implement the relevant GCC laws. Saudi Arabian Riyal (SAR). Arabic.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Only Saudi registered entities may hire employees in the Kingdom of Saudi Arabia (Saudi Arabia or KSA). Non-GCC employees will need to have a sponsor for immigration purposes, and only a Saudi registered entity may sponsor non-GCC employees.

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 (e.g., certain finance positions) and are subject to proportionality requirements. Reference and education checks are common and permissible with applicant consent.

IMMIGRATION

GCC nationals are allowed to 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 can be employed under the Nitiqat (nationalisation) 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. Seasonal work.

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/working permit. Saudi employees will 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

Only Saudi independent contractors can be hired directly by the company or via a personal services company. 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, an employment contract is required for all non-GCC national employees to obtain their visas. 2 copies of the employment contract should be made, 1 copy to be held by each party.

The contract must contain a minimum of: name of the employer and registered address; name and nationality of the employee; identification of the employee (national identity card number for nationals or foreign passport numbers for non-nationals); employee’s salary and any allowances; description of the employee’s duties; identification of the place where the work will be performed; date of appointment and commencement of contract; length of the contract, if applicable. Moreover, the Labor Law mentions that an employment contract template, including all the necessary provisions, must be issued by the Ministry.

Under the Labor Law, the Ministry of Labor and Social Development has issued a unified employment contract that contains mandatory clauses which must be included in the employment contract used between the employer and employee. Both parties may incorporate additional conditions and terms, which cannot be in contradiction with 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 one of them) may terminate the contract for any reason, and the employee has no right to contest the termination or to require the employer to reinstate him or her, nor any right to end-of-service awards. 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.

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 the Ministry of Labor and Social Development standard form template. The Ministry regulations are extensive and include provisions with respect to various aspects of work, including health and safety and 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.

Third-party approval

No requirement to lodge employment contracts or policies with, or get approval from, any third party other than the Ministry of Labor and Social Development.

LANGUAGE REQUIREMENTS

Arabic is the prevailing language in the KSA, though a contract can 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 one 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.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All.

Working hours

Employees can 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, and 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.

Overtime
Overtime is to be paid at the rate of the employee’s wage plus 50% of his or her basic wage for an hour. Employees who hold a senior, supervisory or managerial position are not entitled to paid overtime.

**Wages**

There is no minimum wage for Saudi employees; however, in order to fulfil the Saudization requirements, a Saudi employee will be fully counted if his wage is SAR 3,000 per month or above; otherwise the employee will be counted as less than one.

**Vacation**

An employee is entitled to 21 days of annual leave. Salaries must be paid prior to the employee taking his or her 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% of wages for the next 60 days. The employer is not required to pay the employee after 90 days of absence.

**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 (e.g., as to leaves or end-of-service benefits), but, 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 (i.e., 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 must not interfere with the affected employee’s right to raise a complaint to the authorities regarding any 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 of Social Insurance (GOSI). The total cost of GOSI insurance for Saudi nationals is 22%, of which 10% is paid by the employee and the remaining 12% is borne by the employer. All employees also receive an end of service gratuity on termination. However, where a GCC nationals is working in 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 Sharia 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 end-of-service gratuity on the date of transfer of ownership), the predecessor and the successor shall be jointly and severally 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, he or she may request the termination of his or her contract and collect his or her dues from the predecessor.

EMPLOYEE REPRESENTATION

Labor unions are illegal in Saudi Arabia. "Worker’s Committees" and similar organizations are also not permitted. Instead, the Ministry of Labor and the Labor Commissions 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, winding up the business or parts of the entities activities, retirement, and some other substantial reasons, as well as the consent of both parties.

Any termination that occurs outside of what is permissible by law and/or without following a fair process (ie,
termination for redundancy without proper economic reasons) will be considered unjustified termination, where 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 his/her sickness days, nor can the employee be provided with a termination notice during the statutory sick leave.

Further, no termination notice can be provided to a female employee during her maternity leave.

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 would 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 that closing down of business or terminating a particular activity. A ministerial resolution that has been issued regulates the collective redundancy of Saudi nationals. Process of collective redundancies has been defined. Also, in certain cases the company shall notify the authority before proceeding with the termination including providing full lists of the jobs being removed and 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 will terminate once the fixed term has expired. Both parties can agree on a notice period under a fixed term contract.

If termination is sought prior to the expiry of a fixed-term contract for an invalid reason, and if the parties did not agree on the compensation amount, compensation may be payable to the employee in the form of 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.

For indefinite-term contracts, the party who has suffered an unjustified termination is entitled to compensation equal to 15 days’ wages per year of service.

In both cases (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

End-of-Service Gratuity (EOSG) is not payable before the end of the employment relationship. If the employer ends the employment, the benefit is calculated by adding 1/2 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, he/she will 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 his/her service is in excess of 5 successive years, but less than 10 years; and to the full award if his/her service amounts to 10 or more years.

If an employee is called to military service or cannot work because of force majeure, he/she is 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

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

Non-competes

Non-compete clauses will be honored as long as they are in writing and specified in terms of place, duration (no longer than 2 years) and type of work. If there is no written agreement, or an express non-compete clause is included in an employment contract, the law will not impose any restrictions.

Customer non-solicits

Permissible in narrow circumstances.

Employee non-solicits

Permissible.

WAIVER

Employees cannot waive rights under the Saudi Labor Law.

REMEDIES

Discrimination

Not applicable for this jurisdiction.
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 reinstated.

Failure to inform & consult

Not applicable for this jurisdiction.

CRIMINAL SANCTIONS

Not generally a concern under Saudi Labor Law.

**KEY CONTACTS**

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SINGAPORE

LEGAL SYSTEM, CURRENCY, LANGUAGE

Common law. Singapore Dollar (SGD). 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 Singapore’s Companies Act (Cap. 50), includes the administration, management or otherwise dealing with property situated in Singapore as 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 director/shareholder 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) (EA), Central Provident Fund (under the Central Provident Fund Act (Cap. 36)) and tax obligations and required payroll records. Employers also have income tax withholding obligations with respect to foreign employees.

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
- Where necessary, the obtaining of satisfactory references
• When appropriate, criminal record checks

Employers may also require the prospective candidate to undergo a medical examination and produce evidence of qualifications.

Pre-hiring checks need to comply with Singapore's Personal Data Protection Act 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 (e.g., for the purposes of evaluating employee suitability for the role) or for investigative purposes.

IMMIGRATION

Foreign nationals (i.e., non-Singapore Citizens or Permanent Residents) who wish to live and work in Singapore must obtain valid work passes. There are several types of work passes which are administered and issued by the Ministry of Manpower (Employment Passes, S Passes 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 (EA Employees), with the exception of seafarers, domestic servants and certain government employees. The definition through March 31, 2019 excluded persons employed in a professional, managerial or executive position earning basic monthly salaries of more than SGD 4,500 per month (Non-EA Employees). However, since April 1, 2019 these individuals are covered due to the reforms to the EA. A third category of employees comprises EA employees earning basic monthly salaries of up to SGD 2,500 (SGD 2,600 from April 1, 2019) per month, as well as workmen earning basic monthly salaries of up to SGD 4,500 a month, who are granted further benefits under Part IV of the EA, but 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).

Employees can be hired on a full-time, part-time, fixed-term or at will basis.

Independent contractor

Independent contractors can 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 can be engaged.

**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

Since April 1, 2016, all employers have been 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 (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 employee is on fixed-term contract)
- Working arrangements, such as:
  - Daily working hours (eg 8:30am - 6pm)
  - Number of working days per week (eg six)
  - 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 item 7 salary period) and overtime rate of pay
- Any other salary-related component (such as, but not limited to, any bonus or other monetary incentive) (if applicable)
- Types of leave, such as, but not limited to, annual leave, outpatient sick leave, hospitalization leave, maternity leave, paternity leave and childcare leave
- Other medical benefits, such as, but not limited to, insurance, medical benefits and dental benefits
Probation period (if applicable)

Notice period for dismissal by employer or termination of employment contract by 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, can be provided within the employee handbook or on the company intranet, so long as the information is easily accessible to workers. If all the required KETs are stated in the written employment contract given to employees, 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 (ie, employees who work for less than 35 hours a week), must specify their hourly basic rate of pay, number of working hours and number of working days, amongst others. 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 KETs requirements will be penalised as a civil breach and attract administrative penalties.

From April 1, 2019 employee records 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 3-6 months.

Policies

No mandatory policies for Non-EA Employees (EA Employees cannot have terms and conditions worse than those prescribed under the EA). Certain terms can 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 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, Part IV EA Employees or Non-EA Employees.

Employees (as defined above). Generally, the minimum entitlements apply to EA Employees (especially Part IV EA Employees), which from April 1, 2019, also apply to persons employed in a professional, managerial or executive position earning more than SGD 4,500 per month) given the extension of the definition of employee under the EA.

Matters such as hours of work, overtime and paid annual leave entitlements are currently statutorily prescribed for Part IV EA Employees only. From April 1, 2019 however, minimum annual leave entitlements apply to all EA Employees. 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 for these 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 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 8 hours in one day or 44 hours per week is considered overtime, for which an employee must be paid at least 1.5 times his or her 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, if an EA Employee is required to work on any public holiday, he or she 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. 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, he or she 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 his or her normal working hours.
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 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, 2015 (note: wages increased for this sector as of July 1, 2017)
- Landscape sector – June 30, 2016
- Security sector – September 1, 2016

Since April 1, 2019, new provisions apply which permit deductions with an EA Employee’s consent (although consent can be withdrawn at any time).

Vacation

A Part IV EA Employee who has worked for his or her 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 Part IV EA Employee has worked for his or her 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 Part IV EA Employee has worked in that year. This entitlement applies even if the Part IV EA Employee is still on probation. Further, every employee in Singapore is entitled to be paid for each public holiday. There are presently 11 public holidays in Singapore each year.

Sick leave & pay

An EA Employee who has worked for his or her employer for at least 3 months is entitled to paid sick leave if the EA Employee has informed or tried to inform his or her employer within 48 hours of his or her absence, and the sick leave is certified by the employer’s doctor, employer-approved doctor or a government doctor (including doctors and dentists from approved public medical institutions). The number of days of sick leave is subject to the employee’s service period. Where an EA Employee has worked for a period of at least 6 months, he or she is entitled to paid sick leave with a cap of 14 days where hospitalization is not required; and where hospitalization is necessary, either 60 days in a year (inclusive of the 14 days of outpatient sick leave entitlement), or 14 days plus the number of days on which the employee is hospitalized, whichever is the lower. A pro rata entitlement exists for EA Employees with more than 3 months’ but less than 6 months’ continuous service.

Maternity/parental leave & pay

Under the Child Development Co-Savings Act, any female employee in Singapore is entitled to maternity leave benefits if:

- The child is a Singapore citizen at the time of birth
The employee has worked for the employer for at least 3 months immediately before the day of birth

Eligible employees are entitled to 16 weeks’ paid maternity leave to be used over a continuous period (mothers can start using maternity leave up to 4 weeks preceding birth). For the first and second confinements, employers must pay for the first 8 weeks, and may in certain circumstances be reimbursed by the government for the remaining 8 weeks. Subject to certain eligibility criteria, the full 16 weeks’ entitlement will be government-paid; from the third confinement onwards, it is capped at SGD 10,000 per 4 weeks (including employer’s CPF contributions). The foregoing applies where the mother’s confinement occurs, or the estimated delivery date for her confinement is, on or after January 1, 2017.

Female EA Employees who do not qualify for maternity leave under the Child Development Co-Savings Act may be entitled to maternity benefits under the EA instead, provided the eligibility criteria is met. An EA Employee is entitled to up to a total of 12 weeks’ maternity leave. Of the 12 weeks, generally, the employee will only be entitled to 8 weeks’ paid maternity leave if she has less than 2 children of her own and if she has served her employer for at least 3 months before the estimated delivery date. The EA Employee must also comply with notice requirements under the EA. Failure to provide such notice without sufficient cause will entitle an employer to pay the employee only half her salary during the leave.

From January 1, 2017, working fathers (including adoptive fathers and those who are self-employed) will be entitled to 2 weeks of government-paid paternity leave for all births, which must be used within 16 weeks commencing on the date of the child’s birth, provided they meet certain criteria. If needed, they can also work out an agreement with their employer to take the leave flexibly within 12 months from the birth of the child for one or more than one period, all of which in aggregate are equal in duration to twice the employee’s weekly index (as prescribed within the Child Development Co-Savings Act) or 12 days (whichever is lower). Subject to certain eligibility criteria, a working father (including one who is self-employed) is entitled to share 1 week of his wife’s 16 weeks of government-paid maternity leave, subject to his wife’s agreement. With respect to children born on or after July 1, 2017, shared parental leave for a working father will be increased from 1 to 4 weeks, subject to his wife’s agreement.

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 will be paid by the employer, and the remaining 3 days of leave will be paid by the government. Payments are capped at SGD 500 per day, including CPF contributions. An EA Employee whose child is not a Singaporean citizen will be entitled to 2 days of childcare leave.

**DISCRIMINATION**

Singapore does not have any legislation which expressly prohibits discrimination on the grounds of race, ethnicity, religion, gender, disability or sexual orientation. 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 applies to all employees and prohibits the dismissal of any employee who is below the current retirement age of 62 on the grounds of age, notwithstanding any agreement to the contrary.

Also, female 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 Child Co-savings Development Act, though this is not characterized as discrimination per se.

The Enlistment Act generally prohibits employers from dismissing employees solely or mainly by reason of being called up for national service.

There are also general guidelines, such as the Tripartite Guidelines on Fair Employment Practices, issued by the Tripartite Alliance for Fair Employment Practices (TAFEP), that encourage fair treatment of employees. If an individual encounters workplace discrimination in breach of these Tripartite Guidelines, they can contact TAFEP, which may first engage informally with the employer to assess if the complaint is meritorious. TAFEP can refer cases to the Ministry of Manpower (MOM) where the employer is recalcitrant or unresponsive, and the MOM can impose certain administrative sanctions against errant employers (e.g., curtailing work pass applications and privileges).

**BENEFITS & PENSIONS**

For employees who are Singapore citizens or permanent residents, the employer is required to make mandatory contributions to the Central Provident Fund (CPF).

Benefits offered to an employee will usually depend upon his or her 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, occupational sick 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 his or her consent prior to such collection, use and disclosure. Notably, 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 relate for employment, continuance in employment or promotion.

Note that employers would need to 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 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. 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 will have to have their employment contractually terminated by the transferor on a business transfer, after which they can then be rehired by the transferee (or have their contracts novated).

EMPLOYEE REPRESENTATION

Trade unions are administered by the Industrial Relations Act (IRA), the Trade Disputes Act (TDA) and the Trade Unions Act.

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 (though there may need to be grounds where the employment contract has no express termination provisions). In addition, an employer has a right to summarily dismiss an employee in exceptional circumstances (including gross misconduct) save that "due inquiry" must first be conducted for EA Employees prior to such dismissal. It is usually prudent to set out in the contract the circumstances and grounds on which the employee may be summarily terminated. Suspension is also only possible for EA Employees for a maximum period of one week (unless otherwise agreed by the Commissioner) and provided the employee is given half pay.

Employees subject to termination laws

The EA is the main piece of legislation governing termination of employment. As such, for those employees not covered by the EA, termination is governed by the employment contract between employer and employee.

Restricted or prohibited terminations

None, save for restrictions as to termination of female employees on maternity leave, and termination of employees who attain the retirement age but remain eligible for re-employment under the conditions stated in the Retirement and Re-Employment Act (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 Industrial Relations Act, 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. There is also a general protection against dismissal without 'just cause or excuse' under the EA and under the Industrial Relations Act.

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

None required.

**Mass layoff rules**

There are no laws prohibiting mass layoffs, but these would be subject to any restrictions under the individual contracts of employment and collective agreements (if any). The 2016 Tripartite Guidelines on Managing Excess Manpower and Responsible Retrenchment (Guidelines) issued by the MOM provide guidance on redundancy situations and are commonly followed by employers, but are not legally binding.

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).

Employers who employ at least ten employees will have to make mandatory notifications in the prescribed form to the Ministry of Manpower in Singapore if 5 or more employees will be retrenched within a 6 month period beginning January 1, 2017. While there is no legal definition of redundancy in Singapore, in this context, retrenchments will be taken to mean dismissal on grounds of redundancy or by reason of any reorganization of the employer’s profession, business, trade or work. This applies to permanent employees, as well as contract workers with full contract terms of at least 6 months.

From April 1, 2019, employers will be obliged to provide information to the Commissioner of Labour in relation to the retrenchment of an employee, if so requested. There will be penalties for noncompliance.

**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 contract of service. 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 his or her 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 contract, it is possible for the employer to make 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, and for the EA employee to likewise make a payment in lieu of notice if resigning. The same is true for an employer’s termination of Non-EA employees (provided all relevant contractual benefits are paid in addition to salary) if the same is provided for in the employment contract. Non-EA employees are, however, not entitled to terminate their employment contracts by paying salary in lieu of notice unless there is an express contractual right to do so.
Employees serving their notice period before termination may be placed on garden leave. 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 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 will not be entitled to retrenchment benefits (even where their contracts provide for such benefits) if they have worked for less than two years with their employer. Under the EA read with the Tripartite Guidelines on Managing Excess Manpower and Responsible Retrenchment issued by the Ministry of Manpower, Part IV EA Employees who have served the company for at least two years are eligible to request retrenchment benefits on dismissal if such dismissal is on the ground of redundancy or by reason of any reorganisation of the employer’s profession, business, trade or work although the amount is subject to agreement between the employer and the employee in the absence of contractual provisions.

**POST-TERMINATION RESTRAINTS**

Covenants in restraint of trade are prima facie void in Singapore. They will only be considered enforceable if they can be shown to protect legitimate proprietary interests of the employer, and go no further than is reasonably necessary to protect those interests (especially in duration and geographical area of coverage). The courts have recognized three 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.

**Non-competes**

Not enforceable, unless they can be shown to be necessary to protect the employer’s legitimate business interests, and to be reasonable. Non-competes are also generally not enforceable if there are other clauses binding the employee that already protect the employer’s three legitimate interests, although this position may be changing.

**Customer non-solicits**

Enforceable, subject to the above and strict limitations. Such post-employment restraints may be enforced by courts if:

- Necessary to protect the employer’s legitimate business interests
- Reasonable – both in the interests of the parties and in the interests of the public (eg, should relate to customers that the employee dealt with or had influence over, and be reasonable in duration and geographical area)
Employee non-solicits

Enforceable, subject to strict limitations. A post-employment restraint may be enforced by the courts if it is:

- Necessary to protect the employer’s legitimate business interests
- Reasonable both in the interests of the parties and in the interests of the public (e.g., should relate to certain categories of employees that the employee dealt with or had influence over, and be reasonable in duration and geographical area of coverage)

WAIVERS

A waiver must be clear, but may be either oral or written. A waiver need not be express, but can be inferred from a course of conduct.

REMEDIES

Discrimination

Where it can be argued that there has been a breach of the employer’s implied duties of mutual trust and confidence because of discrimination, the employee may potentially allege constructive dismissal and claim for breach of contract under common law (with damages as the most common remedy).

Unfair dismissal

EA Employees may lodge a claim with the MOM, and refer disputes to the Commissioner for Labour for Adjudicating Matters, for the purposes of recovering salaries and other statutory payments, or may appeal in writing for reinstatement (within one month from the date of dismissal). As mentioned above, the MOM has the power to reinstate EA employees in an appropriate case. Non-EA Employees can only claim for a breach of contract in civil courts, and do not have other claims. However, from April 1, 2019 EA Employees are all able to bring a claim for wrongful dismissal and which will, for the first time, recognise “constructive dismissal” as a ground entitling a statutory wrongful dismissal claim to be brought. Since April 1, 2017, employers and employees have been be able to resolve salary-related disputes through the Employment Claims Tribunals (ECT). This includes claims for unpaid salary, overtime pay, salary in lieu of notice, employment assistance payment and maternity benefits. The ECT also hears contractual salary-related claims for, 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. The claims limit is SGD 30,000 per case for cases which go through mediation with union involvement, compared to SGD 20,000 for all other claims. From April 1, 2019, the ECT also is able to hear claims relating to wrongful dismissal.

Failure to inform & consult

There is generally no obligation on an employer to inform and/or consult the employee on matters related to his or her employment. This usually only arises in a business transfer situation.

In a business transfer situation, if the transferor fails to discharge his or her obligations under the EA to inform and consult EA Employees prior to the transfer, the employee may refer the matter to the Commissioner for Labor
for adjudication, and the Commissioner is empowered to:

- Delay or prohibit the transfer of the employee concerned
- Order the transfer of the employee and set 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: 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; entering into prohibited contracts of service; failure to pay salary as stipulated; and employment of children under 12 years of age.

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**

[Image of a contact person]

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SLOVAK REPUBLIC

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of the European Union (EU), so required to implement relevant EU Directives. Euro (€). Slovak.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign company can engage employees in Slovakia 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%-25%)
- Contributions to social insurance (9.4% by the employee - maximum of EUR 627.73/month; 25.2% by the employer - maximum of EUR 1,629.42/month plus the amount of accident insurance which amounts to 0.8% from the actual salary of the employee)
- Health insurance (4% - 2% by the employee; 10% - 5% by the employer). The smaller percentages apply in the case of a disabled employee

PRE-HIRE CHECKS

Required

Immigration compliance. Criminal record checks in cases in which integrity is required based on the nature of the work or pursuant to special regulations (e.g., public services).

The employer is obliged to provide an assessment, based on the results of a preventative work-related medical examination, of the medical fitness for work of a juvenile employee. The juvenile employee is obliged to undergo this medical examination.

Permissible
An employer may request that a person who was previously employed submit references and a certificate of employment. For an individual applying for his or her first employment, an employer may request only information relevant to the work to be carried out.

Reference and education checks are common and permissible with the applicant’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/EU citizen, may a third country national be employed by a Slovak employer. A residence permit for the purpose of employment and details of previous activity for the three years prior to the employee’s application for residence permission 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 can be engaged by a company. However, the rights and obligations of an independent contractor need to be carefully agreed upon, as the respective labor authorities might 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 upon 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 is required to 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 via a written employment contract, and the employee must be provided with one copy 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 their particular duties
- The place of work (municipality, part of the municipality or another designated place)
- The commencement date of the employment
- Wage terms, unless they are agreed in a collective agreement

Probationary periods

A probationary period can be agreed upon in the employment contract for a maximum of three months, or for a maximum of six months in the case of senior managers (those with responsibility for the direction of the company or who report directly to such a manager). The probationary period may not be extended.

The probationary period must be agreed upon in writing, otherwise it is invalid.

Policies

An employer may issue workplace regulations. These may be subject to previous agreement with the employee representatives, otherwise they may be invalid.

Third-party approval

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

LANGUAGE REQUIREMENTS

Written legal documents relevant to employment relations 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. An employee’s working time should not be more than 40 hours per week. Minimum break of 12 hours per day, or 14 hours per day if the employee is a juvenile employee.

Once a week, an employee must have uninterrupted rest time of two consecutive days, which must fall on Saturday and Sunday or Sunday and Monday, if possible taking into account the nature of the employer’s operation.
Overtime

An employee's 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

An individual's wage must not be lower than the minimum wage provided for by 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.

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<tr>
<th>Degree</th>
<th>Minimum wage coefficient</th>
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For hourly paid employees, the minimum wage rate is calculated by multiplying the relevant coefficient by the minimum hourly wage rate by 40 hours.

For monthly paid employees, the minimum wage rate is calculated by multiplying the relevant coefficient by the minimum monthly wage rate.

In 2019, the minimum hourly wage is EUR2,989 per hour. The minimum monthly wage is EUR520 per calendar month.

Vacation

4 weeks' vacation a year. 5 weeks a year in the case of any employee who reaches the age of 33 years before the end of the given calendar year.

Sick leave & pay

Maximum number of sick leave days is not regulated. However, statutory sick leave and pay provisions allow for up to 10 days of employer-paid sick leave (0-3 days - paid at 25% of the daily assessment base, 4-10 days - paid at 55% of the daily assessment base) followed by sick allowance paid by the social insurance authorities (55% of the daily assessment base, paid from the 11th day until the 52nd week of sickness).
Maternity/parental leave & pay

An employee is entitled to maternity/parental leave until the child reaches age 3, or age 6 where 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 /has care of two 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/parental leave, the social insurance authority pays maternity/parental benefit 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.

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 national Data Protection laws and EU rules. Processing of personal data is generally unlawful except as listed in relevant legislation, or based on consent of the individual. Special rules apply to data transfers outside the EEA.

In general, an employer may collect personal information on an employee which relates to his or her qualifications and professional experience, and other information which is relevant to the work carried out by the employee.

From May 2018, Slovakia is subject to the General Data Protection Regulation, which introduced significant new obligations and onerous sanctions for employers.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Automatic transfer of employment under the EU Acquired Rights Directive/Slovak Labor Code’s rules where there is a transfer of an economic unit (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 transfer, and may object to the transfer. Duty to inform and consult with employee representatives. Significant restrictions on changing
terms and conditions following a transfer. Any dismissal connected to the transfer will be unfair; dismissals for other reasons are possible.

EMPLOYEE REPRESENTATION

Trade unions are prevalent in certain sectors (public sector, health services, manufacturing). Many businesses have no union 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 might be in place.

Where they exist, 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 conditions for which joint decision-making with the works council or employee trustee is 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 agreement.

Employees subject to termination laws

All.

Restricted or prohibited terminations

An employer may not give notice to an employee during a protected period, ie 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 leave or parental leave
- An employee who is a single (or 'lone') parent has been taking care of a child below three years of age
- An employee has been released to pursue public office
- 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 notice or termination with immediate effect by the employer must be
pre-negotiated by the employer 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 give notice to a disabled employee only with the prior consent of the competent Office of Labor, Social Affairs and Family, failing which the 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 between 20–100 employees are to be made redundant within 30 days. In businesses with 100-300 employees, the threshold is 10% 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 and must inform the Office of Labor, Social Affairs and Family and provide a list of the employees to be dismissed. 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.

Failure to comply with the above information and consultation obligations will not render any notice of termination or any agreed-upon termination invalid.

**Notice**

An employer may give notice to an employee only on the basis of a reason expressly stipulated by the Slovak Labor Code. The reasons for termination include winding-up or relocation of the employer, redundancy of the employee, lack of medical fitness, failure to satisfy the requirements of the agreed work, dissatisfactory performance of work tasks, etc.

The length of the notice period depends on the length of an 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 with notice, by reason of redundancy, due to winding up or relocation of the employer, or due to the employee’s inability to carry out his or her current work, will be entitled to severance pay amounting to 1 to 4 times his or her average monthly earnings, depending on the length of his or her employment.

Where the employment is terminated by agreement for one of the above stated reasons, the employee is entitled to severance pay amounting to 1 to 5 times his/her average monthly earnings, depending on the length of his or her employment.
An employee whose employment is terminated by notice of termination or by agreement because the employee cannot perform their work due to a workplace injury, occupational disease or due to the threat of such disease, or if he or she has reached the maximum permissible exposure (e.g., to hazardous substances) in the workplace, is entitled to severance payment in the amount of at least 10 times his or her 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 a maximum of one year after termination of employment, the employee shall not pursue any gainful activity which is competitive in character with the employer’s activity.

The employer must provide appropriate financial compensation to the employee in the amount of at least 50% of the employee's average monthly earnings for each month of the commitment. The employee and the employer may agree in the employment contract on appropriate financial compensation which the employee is obliged to pay if he/she breaches the agreed obligation.

**Customer non-solicits**

Customer non-solicits are not regulated by the Slovak Labor Code, and therefore, their enforceability is 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, and therefore, their enforceability is 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, unless an employee waives his or her rights prior to their existence. Such waiver shall be invalid.

**REMEDIES**

**Discrimination**

Where the principle of equal treatment with respect to access to employment is violated by an employer, the affected individual will be entitled to reasonable financial compensation.

If reasonable financial compensation is not sufficient, especially where the violation of the principle of equal treatment has considerably impaired the dignity, social status or social functioning of the injured party, the injured
party may also seek compensation for non-pecuniary damage. The amount of any compensation for non-pecuniary damage is determined by the court, after considering the severity of the damage caused and the circumstances in which it occurred.

Unfair dismissal

If an employer invalidly terminates employment and the employee informs the employer that he/she wants to continue in employment with the employer, the employee's employment shall not terminate, until a court decides that the employer cannot be equitably requested to continue to employ the employee or a court decides that the termination of employment was valid. The employee will be entitled to wage compensation, amounting to his or her average earnings, from the date the employee requested continued employment with the employer to the date either when the employer allows the employee back to work or on which a court decides on the termination of employment. Wage compensation may be awarded for 36 months at the most.

Failure to inform & consult

Failure to consult/obtain approval of the employee representatives to a termination of employment may result in the termination being held to be invalid by the court. In such a case, the employer must provide the employee with compensation, amounting to his or her average earnings from the date the employee requested continued employment to the date either when the employer allows the employee back to work or on which a court decides on the termination of employment. Wage compensation may be awarded for 36 months at the most.

CRIMINAL SANCTIONS

Non-payment of wages or severance pay may be punished by a prison sentence of up to 12 years, depending on the circumstances of and motive for the non-payment, and on the damage caused.

KEY CONTACTS

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View bio
SOUTH AFRICA

LEGAL SYSTEM, CURRENCY, LANGUAGE


CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign company must register as an "external company" with the Companies and Intellectual Property Commission before it can enter into employment contracts in South Africa, and is required to pay corporate income tax. Companies (including external companies) are obliged to register and deduct tax from an employee's salary, and, in addition, have reporting duties to the South African Revenue Services. The maximum personal tax rate is currently 45%.

Employers are required to contribute to prescribed employee benefit funds and make contributions to an unemployment benefit fund. Employee contributions to the unemployment benefit fund are deducted and paid on their behalf by the employer.

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 his/her fingerprints. Once the Protection of Personal Information Act, 2013 (POPIA) comes into effect, consent would be 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 would require 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, once POPIA is in effect the applicant would need to be notified about the background checks that will be carried out.

**IMMIGRATION**

All non-citizens must hold an appropriate work visa. Local sponsor 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 is capable of filling the applicant’s position. Foreign nationals who overstay will be declared undesirable and their ability to apply for any type of visa thereafter, 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). Fixed-term employment of employees earning below a threshold amount that is published annually (the BCEA threshold), currently set at ZAR205,433.30, is partially restricted, in that such employment may only be freely utilized for a restricted time (3 months), unless one of a limited number of exceptions and/or reasons for using longer fixed-term employment exists.

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 employees 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) access to training and skills development on a whole not less favorable that 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 will apply. 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 one aspect to be considered.

Agency worker

Employees earning below the BCEA threshold enjoy additional protection if placed at a client through an agency (temporary employment service). Except in limited circumstances, after an initial period of placement, the agency worker will be deemed employed by the client, without the loss of any remedies against the agency, and become entitled to have terms of employment equalized relative to comparable permanent employees of the client. No deemed employment applies to higher-earning agency workers.

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, e.g., 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, 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

Permissible for a "reasonable period" (normally between three and six months).

Policies

An employer must have a sexual harassment policy as well as a policy dealing with protected disclosures (i.e., 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, but are required to adhere to the requirements contained in the Occupational Health and Safety Act.

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. 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

Maximum 45 hours a week, subject to the exemptions identified in the BCEA (employees earning above the BCEA threshold; senior managerial employees; employees engaged as sales staff who travel to the premises of customers and who regulate their own hours of work; employees who work for less than 24 hours per month for the employer; and an employee who performs work that is required to be done without delay, owing to circumstances for which the employer could not reasonably have been expected to make provisions, and which cannot be performed by other employees within their normal working day). Rules on rest breaks, night work and rest periods between shifts apply. Agreements on compressing work weeks and averaging of work hours can 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 (10 hours per week, or 15 hours in terms of a collective agreement), but agreements on compressing work weeks and averaging of work hours can 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 1-1/2 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 provides for a minimum wage of ZAR 20 per hour. This minimum wage is ZAR 18 per hour for the farming sector.

Vacation

Minimum 3 weeks' paid annual leave as well as 12 days' statutory holidays, on full remuneration.

Sick leave & pay

All employees are statutorily entitled to paid sick leave of 6 weeks per 36-month employment cycle. Payment is
based on basic wages, not full remuneration. Pro-rated leave entitlements may apply for shorter periods of employment and in the first 6 months of employment.

**Maternity/parental leave & pay**

Minimum of 4 consecutive months of unpaid maternity leave. Employees may claim partial remuneration through the Unemployment Insurance Fund.

No specific paternity leave provisions; however, family responsibility leave of 3 days per year (non-cumulative) can be used as paternity leave, or as contractually agreed. Unfair discrimination based on gender is, however, prohibited, with the effect that in particular circumstances, a father may be granted access to maternity leave, where failure to do so would be unfairly discriminatory. Once the Labor Laws Amendment Act comes into effect, employees will be entitled to 10 consecutive weeks’ unpaid adoption leave in the event of the adoption of a child under the age of 2, 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 will be 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.

**DISCRIMINATION**

Direct and indirect unfair discrimination are prohibited. Sexual harassment and unequal pay on prohibited grounds are given express protection as forms of unfair discrimination. Designated employers are obliged to put into place affirmative action policies, including numerical targets but excluding quotas, to increase access to opportunities for previously disadvantaged South African citizens (African, Colored, Indian people, women and people with disabilities).

The listed grounds protected from unfair discrimination 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.

**BENEFITS & PENSIONS**

The contract of employment will determine whether the employee is entitled to any further benefits, including subsistence, travel and pension allowances, bonuses or acting-up allowances.

No obligation that employees should belong to a retirement fund.

**DATA PRIVACY**

The right to privacy is protected under the Constitution of the Republic of South Africa, 1996 and the common law. 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 generally be processed with consent or where necessity dictates.

The Protection of Personal Information Act, 2013 (POPIA) has been signed into law but, save for certain sections,
is not yet in force and effect. It is anticipated to come into effect shortly.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Employees automatically transfer to the new employer in the event of a transfer of a business or service as a going concern. No general consultation requirement, but terms of service can only be amended by agreement. Disclosure of information required, with failure to do so resulting in limited joint and several liability for the two employers. No dismissal by reason of the transfer, but dismissals due to operational requirement 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 (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

Termination is permissible if substantively and procedurally fair. Dismissal is only justifiable by reason of misconduct, capacity (ill-health or performance) or operational requirements. Termination by effluxion of time (ie, fixed term or retirement age) is not considered dismissal; hence there is no requirement of fair reason or fair process.

Employees subject to termination laws

All employees from the beginning of the employment relationship, although termination is easier during a probation period. Independent contractors not protected.

Prohibited or restricted terminations

Automatically unfair dismissals are prohibited, and increased penalties will attach if a dismissal is motivated by one of these prohibited reasons. Automatically unfair dismissals include for instance dismissals due to employee participation in lawful strike action and dismissals due to an employee’s pregnancy or a reason related to pregnancy.

Third-party approval for termination/termination documents

Not required.

Mass layoff rules
Strict information and consultation rules apply to all mass layoffs (operational requirement dismissals or retrenchments). Additional requirements apply to large-scale retrenchments (size of retrenchment determined on a sliding scale, by reference to number of affected employees compared to total employees).

No notice to government officials required.

**Notice**

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 neither regulated by statute, nor commonly provided for in employment contracts.

**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 against public policy. The enforcing party must, however, be able to show a protectable interest, and the limitations to competition must not go beyond what is reasonably necessary to protect such legitimate business interest. Protectable interests include client relationships and trade secrets.

**Non-competes**

Permissible, in principle, if the employer has a protectable interest and the restraint goes no further than necessary to protect that interest.

**Customer non-solicits**

Permissible.

**Employee non-solicits**

Permissible.

**WAIVERS**
Employees can 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.

**REMEDIES**

**Discrimination and sexual harassment**

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 Labor 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.

Remedies include compensation (unlimited) and damages (limited to the BCEA threshold).

**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 Labor Court, or arbitration at the CCMA or Bargaining Council. Strict time limits apply.

Remedies are primarily reinstatement (possibly retrospective) and compensation, limited to a maximum of 12 months' remuneration for unfair dismissal, and 24 months for 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 reinstatement remedy is not available. For large-scale retrenchments, if an employer does not comply with a fair procedure, which includes engaging in consultations, the Labor 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 de-criminalized; however, specific legislation renders some behavior a criminal offense. For instance, disclosure of the private information of employees to third parties is an offense.
KEY CONTACTS

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LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law, though court precedents play an important role. South Korean Won (KRW). 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 four 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 are to be checked.
IMMIGRATION

Long-term and short-term general work visas are available to visit Korea for business-related purposes. 2 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/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; and 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 can 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 of 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 will be 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 employees" 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 3-6 months will be adopted.

Policies

Rules of Employment are required in companies with 10 or more employees in Korea. Apart from that, 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 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 labor authorities. 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 employees 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.

Overtime

Limited to 12 hours per week, to be paid at 150% of ordinary wage. However, overtime work performed on a holiday for 8 hours or less will be paid at 150% of ordinary wage. Overtime work performed on a holiday for more than 8 hours will be paid at 200% of ordinary wage.

Wages

The Minimum Wage Act (MWA) provides for minimum wage levels. The minimum wage can be fixed on an hourly, daily, weekly or monthly basis. The hourly minimum wage rate in effect for 2019 is KRW 8,350. 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% 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 have 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 first year of employment and 15 days in the second year of employment).

Following completion of the first 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 will 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 first 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 Labour 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 3 days’ paid leave, with 2 additional days of unpaid leave which can be taken at the employer’s discretion, within 30 days of the child’s birth.

Employees with children 8 years of age or under or in the second year or lower of elementary education have an entitlement to unpaid childcare leave of up to 1 year. This entitlement is applicable to both fathers and mothers. The employee must have worked for the same employer for at least 6 continuous months. The employer is not obliged to pay wages during childcare leave; however, employees are instead paid under the employment insurance system.

- For the first 3 months of childcare leave, employees may receive 80% of their ordinary wage, up to KRW 1.5 million
- From the fourth month of childcare leave until the end of childcare leave, employees may receive 50% of their ordinary wage, up to KRW 1.2 million

25% of the above amount is payable 6 months after the employee’s return to work.

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 first day of this 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.

**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.

**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 his or her personal information. The PIPA requires an employer to obtain the consent of the individual employee when his or her 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, and 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 will have 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 workers, 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

**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 will trigger a duty to report

- Where 100-999 employees are routinely hired, dismissal of 10% of the workforce will trigger a duty to report

- Where 1000 or more employees are routinely hired, 100 or more dismissals will trigger a duty to report

**Notice**

If an employee is dismissed, the LSA requires that the company provide the employee with at least 30 days' prior notice or at least 30 days' ordinary wages in lieu of notice. The company can 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

- 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 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" (all wages generally including any bonus paid within the previous 3 months) for each year of continuous service.

**POST-TERMINATION RESTRAINTS**

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 claim before the National Human Rights Commission with possible remedy of recommendation for cease of discriminatory activities and/or damage compensation, etc.

- **Unfair dismissal**

  An employee can bring a claim before the relevant Regional Labour Relations Commission (RLRC) with possible remedy of reinstatement with back pay. Where the employee does not wish to be reinstated, a lump sum can 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 can be deemed null and void in the absence of required consultation. Action for breach of contract may be possible, but damages should be substantiated.

**CRIMINAL SANCTIONS**

If the ruling of unfair dismissal is finalized by the court and the employer does not comply with the reinstatement order from RLRC, the employer may be subject to an imprisonment of up to 1 year or a criminal fine of up to 10 million KRW.

**KEY CONTACTS**

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SPAIN

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of European Union (EU), so required to implement relevant EU Directives. Euro (€). Spanish.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity can engage employees in Spain with proper payroll registrations, subject to business, corporate 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 (e.g., security guards), the employee must provide the potential employer with a certificate proving that he or she does 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 he or she can 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.

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.

**Independent contractor**

Independent contractors can 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 can 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.

**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 has to be put in writing, and, in all cases, a summary of the main terms of the contract (copia básica) has to 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 (provided by the Employment Office).

Mandatory employment legislation and the applicable collective bargaining agreement (CBA) must be honored.

**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 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 (eg, policy regarding the use of the IT systems) or professional formation plans, then employees’ representatives should be invited to provide a non-binding report.

**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 only in Spanish. If companies issue additional employment agreements, they could 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 that employees subject to special employment regulation of senior management (Royal Decree 1382/1985) 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.

**Overtime**

Only with employee consent (except in cases of force majeure). Overtime must be compensated in cash (with a value at least equivalent to the ordinary hour), or time off in the following 4 months. CBAs may establish more beneficial treatment for the employee.

**Wages**

The minimum wage fixed by the Spanish government for 2018 is: €30 per day, €900 per month and €12,600 per year (dispensed in 14 total payments) for a full-time worker.

All CBAs establish salary charts with higher minimum wages.

**Vacation**

30 days' vacation per year (plus 14 public holidays). CBAs may establish longer vacation.

**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 social security benefits.

**Maternity/parental leave & pay**

16 weeks’ paid maternity leave and 5 weeks’ paid paternity leave. In both cases, the pay is borne by the Social Security Scheme and is equivalent to 100% of the regulatory base (that is, the employee’s salary determined pursuant to a specific formula over which public benefits are calculated), except the first 2 days of paternity leave, where the cost is covered by the employer at the employee’s regular salary. Employees have a right to return to work. CBAs may require the employer to improve social security benefits. In some cases, the father can take a part of the maternity leave days.

**DISCRIMINATION**
Characteristics 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 co-workers 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, paternity).

**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**

Employees generally must be notified of personal data processing (and in certain cases, have to give consent). Registration of databases with the Spanish Data Protection Commissioner (AEPD) is required. Special rules apply to data transfers, even between companies belonging to the same group. International data transfers are subject to a stringent regime of administrative approvals and consents. Significant restrictions on monitoring email and Internet use at the workplace. Spain is subject to the General Data Protection Regulation.

**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 preeminent 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 11-49 employees (or in companies with 6-10 employees if requested by the majority of employees), employees can initiate elections to choose personnel delegates; in companies with 50 or more employees, they can 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 collective basis; disciplinary dismissal (including 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, employees who have filed a claim against the company). Protected employees can be terminated, but only for fair cause, or they will be entitled to reinstatement and back wages.

**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 will be 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 can 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 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 can 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 could also be subject to civil law claims under unfair competition rules.

**Employee non-solicits**

Permissible under the abovementioned rules. Extensive solicitation could 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 his/her position prior to the violation of the fundamental right. In addition, companies can face a fine ranging from €6,251 to €187,515, 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
- 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 of nullity of the terminations and a fine ranging from €6,251 to €187,515. If the rights of the trade union are violated, an additional uncapped compensation can be imposed (normally between €3,000 and €6,000).

Failure to inform or entrust in the start of TUPE will result in a fine ranging from €651 to €6,251 and, in exceptional circumstances, the declaration of nullity of the transfer of employees.

**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. Swedish Krona (SEK). Swedish language.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign company can 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% to be borne by the employer. The Swedish personal tax system operates with a progressive rate varying from approximately 28% to 57%.

The employer shall deduct from the gross salary and deliver each employee’s personal tax 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. Criminal record checks are only permissible for specific roles (e.g., childcare positions) and subject to proportionality requirements.

IMMIGRATION

Nationals of the Nordic countries, most EU/European Economic Area (EEA) countries and Switzerland are permitted to begin working immediately upon entering Sweden, but must register at the Migration Board no later than 3 months after entering the country. Most non-EU/EEA, non-Nordic and non-Swiss citizens who intend to
enter Sweden to work need a work permit.

**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 less favorable salary or other employment terms, compared to employees in a similar situation working full-time or those in permanent employment.

**Independent contractor**

Independent contractors can be engaged directly by the company. However, engagement may be subject to misclassification exposure. Also, hiring of independent contractors may be subject to consultation requirements if the employer is bound by a collective bargaining agreement.

**Agency worker**

Agency workers can 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 that the employer (ie, the temporary work agency) 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.

**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

Within 1 month of the commencement of employment, employees must be provided with certain information regarding minimum terms, eg, name of employer, salary, workplace, vacation, type of employment, etc. Issuing employment agreements is common best practice.

**Probationary periods**

Permissible. Subject to a statutory limit of 6 months.

**Policies**

No requirement to have written policies, but they are commonly used. It is generally advisable for an employer to have certain policies, eg, concerning unilaterally issued benefits and use of work equipment (Internet access, computers and mobile phones).

**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. The employer may require the employees to work overtime for up to 48 hours during a period of 4 weeks, or 50 hours during 1 month, subject to a maximum of 200 hours per year (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 year (additional overtime).

**Overtime**

There is no statutory right to overtime payments. However, collective bargaining agreements typically include a right to overtime payments for employees in lower positions.

**Wages**

There are no statutory regulations on minimum wages in Sweden. However, collective bargaining agreements typically include provisions regarding minimum wage/salary. Thus, subject to any collective bargaining agreement and non-discrimination law, an employer and employee can freely agree upon the level of salary to be paid, and any future salary increases.

**Vacation**

Employees are entitled to 25 days of paid holiday (public holidays excluded), after 1 year of employment (qualifying year), pursuant to the Swedish Holiday Act. 30 days of annual holiday is common for white collar employees and professionals, either by individual contract or by a collective bargaining agreement.

**Sick leave & pay**

By law, the employer pays for the first 14 days of sickness for an employee at 80% of the ordinary salary level. Thereafter, the Social Insurance Office takes over the responsibility to pay. Other benefits may be paid in accordance to the individual employment agreement or a collective bargaining agreement.

Employers who have an employee who is expected to be on sick leave for more than 60 days needs to 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.

**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 granted different types of leave (eg, total 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 the age of 18 months.

The employer is not required to pay the employee any salary during the time he or she is 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 (450 days for children born before 2002), until the child has reached 12 years (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 age 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 in order 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 his or her 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 death insurance; mobile telephone; company car/car allowance; and contributions from the employer during parental leave (in addition to what is paid from 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 Swedish Personal Data Act 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 (eg, 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 of the employment agreement or consent; and the employee must receive adequate information regarding the processing. Special rules apply to data transfers outside the EEA.

Since May 2018, Sweden has been subject to the General Data Protection Regulation, which introduced significant
new obligations and onerous sanctions for employers.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a business transfer are automatically transferred, under the Employment Protection Act (EPA). The employer has a duty to inform and consult with trade unions if the 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, totaling around 75-80%. 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 three levels: national (between the Confederation of Swedish Enterprises and the employee federations); industry-wide (between industry-wide organizations on both sides); and local (between the company and the local union). Legally binding agreements are concluded at all levels of bargaining. Traditionally, the industry-wide level has been the focus of bargaining, and there are industry-wide collective agreements in almost every sector of the Swedish economy.

The concept of works councils is not recognized in Sweden (besides European Works Councils). Instead, employees' influence is safeguarded by the trade unions.

TERMINATION

Grounds

The EPA requires that the employer has a "just cause" in order to terminate employment. The EPA distinguishes between termination due to personal reasons (e.g., poor performance, misconduct or disloyalty) or economic reasons (e.g., restructuring or reorganization, closing down of business, etc.). 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 to be a last resort by the courts, and the burden of proof is on the employer. An employee may also be summarily dismissed in a situation where he or she grossly neglects obligations towards the employer.

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, e.g., 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 (e.g., the Discrimination Act and the Parental Leave Act). Employees who also are trade union representatives (fackliga fortroendeman) may be protected under the Trade Union Representative in the Workplace Act (lag om facklig fortroendemons stallning pa arbetsplatsen).

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, normal redundancy rules under the EPA must be adhered to.

Notice

The minimum statutory period of notice for the employer is 1 month, and the period of notice increases by 1 month for each 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.

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 his or her trade union at least 2 weeks in advance, prior to handing over the termination notice. Thereafter, the employee and his/her trade union have a right to request consultations. The termination cannot be effected until the consultations are concluded. In case of termination without notice (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 is not mandatory. However, at least in midsize to large companies, it is standard practice 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. The severance pay is normally corresponding to 6 to 12 months’ fixed salary. Also, in a specific termination situation, it is common that the employer pays 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 e.g., non-compliance with the last-in-first-out rule (LIFO).
POST-TERMINATION RESTRAINTS

There are no specific statutory rules under Swedish law prohibiting post-contractual restraints. Instead, the rules are normally contained in collective bargaining 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. If the employee is provided with compensation (at least 60% of the employee’s monthly salary) during the restricted period, the chances of the restrictions being enforceable are typically better.

Non-competes

Normally 9 months, but at most 18 months. The latter normally only applies in exceptional circumstances. 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% of the employee’s previous salary with the employer.

Customer non-solicits

Permissible, but can be adjusted by a court ruling.

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.

WAIVERS

Enforceable. The employee may sign a settlement agreement waiving statutory rights.

REMEDIES

Discrimination

Any individual or legal entity that violates the prohibitions against discrimination and reprisals, or fails to fulfil the obligations to investigate and take measures against harassment, may be ordered to pay compensation to the individual who has been affected by the breach. An employer may also Unfair dismissal

Employees can challenge a dismissal due to redundancy or due to personal reasons. If the termination is found unjust and deemed to be 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 16-32 monthly salaries. If the employee does not ask for reinstatement, he or she 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.

Failure to inform & consult
Liability for damages to trade unions. Damages seldom exceed SEK 150,000 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.

**KEY CONTACTS**

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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 have to be paid in addition to the gross salary, at approx. 12-20% of the gross salary. Employee’s contributions have to be deducted from the employee’s gross salary, at approx. 10%-17% of the gross salary. The employer has to 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 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 but there are some
restrictions on Bulgarian, Romanian and Croatian citizens. 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 8%. This threshold will be decreased to 5% from January 2020.

**HIRING OPTIONS**

**Employee**

Indefinite, fixed-term, with 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 have to 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, furniture industry, hospitality and restaurant sectors, private security services and retail).

**Probationary periods**

Permissible. Up to 3 months (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 needs to 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

45 hours a week limit on working time 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 possible within appropriate limits, eg, in case of emergency, and generally for a maximum of 2 hours a day and 170 hours a year). 50 hours a week limit for others workers (supplementary time 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%. 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% instead of at 125%), 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 Neuchatel canton (minimum CHF 20.02 per hour, adapted every year to the consumer price index). In November 2017, Jura canton adopted a Cantonal Act on Minimum Wage (CHF 20 per hour), but this remains subject to a referendum and its entry into force has not been fixed yet. The Ticino canton is also in the process of adopting a Cantonal Act in that respect. 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% 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 Geneva canton). A 1-week paternity leave is common in practice, but not mandatory.

DISCRIMINATION

Gender discrimination is directly prohibited. Other kinds of unjustified discrimination are indirectly prohibited (ie, only if the employee is able to prove that the discrimination has led to a violation of his or her personality, that is, when he or she has suffered painfully worse treatment than other employees, without any objective reason).

BENEFITS & PENSIONS

Old-age, survivors and disability risks are covered by a three-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 (individual characteristics, complaints made by the employee regarding his or her working conditions or his or her agreement not being respected, trade-union membership, etc.) 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 (accident, sickness) for limited periods increasing with seniority (30 to 180 days), or is pregnant or in military service, or within the 16 weeks following giving birth. These are the non-exhaustive main examples.

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

Not required.

**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 (250 employees and over), 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 have to be notified within 2 – 3 days after having discovered the breach).

**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. 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 has to 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 the 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 month’s salary.

Sexual harassment: up to 6 months' pay based on the Swiss average salary. Moral sufferance: generally no more than CHF 25,000.

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 reinstatement in the company (rarely invoked).
Failure to inform & consult

Mass redundancies: 2 possible consequences: a) the employment agreements are not considered as terminated as long as the Cantonal Labor Authority has not been notified of the results of the consultation; b) the dismissal is considered as unfair, giving right to compensation capped to 2 months’ salary.

Transfer of business undertakings: general remedies (reimbursement of damages). Merger: possibility to block the merger.

CRIMINAL SANCTIONS

Failure to comply with health and safety legal requirements; undeclared or illicit work; sexual and psychological harassment.

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TAIWAN

LEGAL SYSTEM, CURRENCY, LANGUAGE


CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Foreign companies cannot directly engage employees in Taiwan, but can 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 and 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 he or she is subject to the LSA, and is, in fact, an employee.

Agency worker

Called a "dispatch worker" in Taiwan, and 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 over 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, on only one of which a worker may work for overtime.
Depending on the industry and with approval from a labor-management conference, employers are allowed to adopt various types of flexi-time schedules. The 2-hour 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 can distribute working hours within 4 weeks, but the distribution must not go over 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 (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 sixth day in one week will be considered entirely overtime, and according to number of hours worked.

Wages

Starting January 1, 2019, the minimum wage will be TW$23,100 a month and TW$150 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 more day per year until 30 days. 12 days off for public holidays, with varying dates.

Sick leave & pay

30 days of 1/2 pay sick leave per year.

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 will also be entitled to take leave. Male employees can take 5 days of paid paternity leave. 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: age, disability, class, thought, facial features, language, gender reassignment, marital status, political party, pregnancy or maternity, race, religion or belief, sex or sexual orientation.

BENEFITS & PENSIONS

Labor and National Health Insurance systems covered through payroll deductions and contributions. There are 2 pension systems (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 Information Protection Act. The Act has notice and consent requirements that can 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 Services 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 personal information includes: physiological information: for example, medical tests and fingerprints; psychological information: for example, psychiatric tests and polygraph tests; and personal lifestyle information: for example, financial records, criminal records, family information and 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 (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 highly regulated. 30% 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, because many larger corporations have unions instead.

TERMINATION

Grounds

Termination without notice or severance is allowed in cases where an employee is involved in acts of violence, serious contract/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 (i.e., when performance of contractual obligations is prevented by an event or circumstance outside the parties’ control)

• 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 can also be terminated on performance grounds, where the employee is proven to be incapable of carrying out the work assigned to him/her.

Employees subject to termination laws

Most employees (95.3%), 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 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

• 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 law 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. Notice is not required in cases of very serious misconduct.

Statutory right to pay in lieu of notice or garden leave

Both are permitted.
Severance

Generally, severance is 50% 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/provision to be valid and enforceable, the following requirements must be met:

- There are special interests of the employer that deserve protection
- The employee occupies 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 need to be compensated for loss from the non-competition obligation, separate from salary received from employment
- 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 no longer than 24 months.

WAIVERS

Waivers of statutory claims may not be enforceable in Taiwan.

REMEDIES

Discrimination

Penalties range from TW$300,000 to TW$1.5 million. Severance and pay in lieu of notice may also be required in
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 TW$90,000 to TW$450,000.

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 payment in lieu of notice. Penalties range from TW$100,000 to TW$500,000.

CRIMINAL SANCTIONS

Not a concern.

KEY CONTACTS

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THAILAND

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law based on various laws and practices, in particular Napoleonic Code and German civil law. Thai Baht (THB). Thai.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity can 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 (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.

A candidate can be asked to have 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.

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 applicant will initially be permitted 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. The 1 year non-immigrant business (B) visa will be granted in 2 consecutive periods of 1 month and 11 months respectively.

Where the employing company has registered capital or total current assets in excess of THB 30 million and the foreign employee's role is at management level or as a specialist, a visa extension can be requested via the One Stop Services Center.

After the work permit has been issued for one 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 one 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 2 million Baht per foreign employee (except where the employer obtains promotional privileges from the Board of Investment 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 THB 30 million and the foreign employee’s role is at management level or as a specialist, the work permit will be issued within one business day at the One Stop Services Center.

**HIRING OPTIONS**

**Employee**

A "hire of services" is a contract whereby a person, called the employee, agrees to render services to another person, the employer, who agrees to pay remuneration for the duration of services. Employment can be full-time, part-time, definite or indefinite.

**Independent contractor**

A "hire of work" is a contract whereby a person, called 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 will not have the power to control the contractor. Unlike an employee, an independent contractor under a "hire of work" contract will neither be 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 and 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 he/she 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 as if the employee were engaged by it 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. On the contrary, a worker with an agency, (ie, a company operating a job procurement business) shall be deemed the employee of the agency, and not of the agency’s customer.

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, because those terms shall be considered as working conditions.

Probationary periods

Permissible. Normally, probation should not exceed 119 days, due to the laws entitling an employee who has worked for 120 days or more 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 can be provided to employees electronically (eg, emails or intranet). These must be provided in the Thai language and, as a minimum requirement, contain particulars of the following:

- 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 having 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 deemed the working condition agreement in such a workplace.

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 once the employee has worked for 5 consecutive hours. 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 where 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 (i.e., 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 one 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 THB 308-330 per day, depending on the province where the work is performed (i.e., THB 325 for Bangkok). The minimum rates for skilled workers from the beginning of 2019 are up to THB 825 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 one 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 as prescribed and announced in advance by the employer.

**Sick leave & pay**

An employee is entitled to sick leave as many days as the employee is actually sick. The employee will be entitled to payment of his or her 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 90 days' maternity leave through May 4, 2019. From May 5, 2019, such employees will be entitled to 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 can 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 that an employer should 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, as the case may be, 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 0.2-1% 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.

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% of an employee's salary, with a maximum of THB 750 per month. As a member of the Social Security Fund, an employee is entitled to receive compensation benefits in non-work-related cases.

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 can contribute a minimum of 2% to a maximum of 15% of his/her wages depending on the policy of the service provider, and the employer would normally contribute no less than the employee’s contribution.

DATA PRIVACY

There are currently no provisions governing data privacy under Thai law, although the Constitution offers general data privacy protection. However, the misuse of another’s personal data without consent could be considered a wrongful act under Thai civil and commercial code (ie, willfully, negligently or unlawfully injuring the life, body, health, liberty, property or any right of the injured person), and Thai Criminal Code (ie, disclosure of secrets), if such misuse causes damages to the data subject.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

There is no automatic transfer of the employment relationship from one entity to another under the LPA. Employees would normally be transferred in two 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 his/her employment with the transferor will continue and the employee’s service with the transferee will be recognized by the transferee.
• Or full termination of the employee’s employment with the transferor and the entering into of a new employment agreement with the transferee

In the latter case, the transferor will be liable to provide 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 can 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 will not be considered a transfer of business or employer, as the employing entity will remain 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 five 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 one-half of the Employees’ Committee members or the labour union. The purpose of the meetings is:

• To provide for employees’ welfare

• To consult about working regulations which may be beneficial to the employer and employees

• To consider any complaints by the employees

• To 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% of the total number of employees who hold interest in such a demand. The employees have the right to elect representatives (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 need to be satisfied by officials before a labour union can be recognized. The labour union can assist in requesting the creation or amendment of a working conditions agreement, settling disputes, acknowledging arbitral awards and in employee strikes.

**TERMINATION**

**Grounds**

Whether an employer has reasonable grounds for termination will be 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):

- being guilty of dishonesty or intentionally committing a criminal offence against the employer
- wilfully 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 offence
- 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; provided that in the case of an offence committed due to recklessness or misdemeanours, 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 Labour 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 employee who is a member of the Employees’ Committee (in which case approval from the Labour Court is required).

**Mass layoff rules**
Only apply in the case of termination of employment due to the introduction of machinery or replacement of machinery or application of technology. There is no numerical threshold to be reached before the rules apply.

**Mass layoff rules**

Only apply in the case of termination of employment due to the introduction of machinery 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. From May 5, 2019, 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 can declare his/her intention to retire to an employer. Such intention will become effective after 30 days from the date of the declaration. The retirement will be 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 reorganization, improvement of the production process, distribution or service due to the introduction of machinery 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 laws. Employer and employees may agree thereto on a case by case basis. Nevertheless, such agreement must not take advantage of an employee. Otherwise, it will 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, overtime payment, etc.

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 requires a definite date to commence and end the work
- For work which is occasional with a definite ending or completion
- For work which is seasonal

And provided that the work is completed within a period not exceeding two years, and that 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>
</tr>
</thead>
<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>
</tr>
<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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</tbody>
</table>

Special severance pay

If an employer terminates an employee due to the introduction of machinery 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 can be enforced to the extent that they are reasonable and fair to the parties.
Non-competes

Non-competition agreement is permissible to the extent that it is reasonable and fair to the parties. Generally, a restriction period of not more than 2 years, within a restricted area (such as Thailand) is acceptable.

Customer non-solicits

Non-solicitation agreement is permissible to the extent that it is reasonable and fair to the parties. Generally, a restriction period of not more than 2 years, within a restricted area (such as Thailand) is acceptable.

Employee non-solicits

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 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, eg a right to bring a claim against the employer for unfair dismissal.

REMEDIES

Discrimination

The employer violating discrimination provisions contained in LPA will be subjected to criminal penalty of a fine of not more than THB 20,000.

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 is entitled to file a case against the employer claiming that his/her termination is unfair.

If the termination is considered an unfair dismissal, the Labor Court may order:

- Reinstatement – where the employee is re-employed to the same position
- Re-engagement – where the employee is re-employed to at least the same level as he/she was previously employed
- Financial compensation

Failure to inform & consult

No statutory requirement.
CRIMINAL SANCTIONS

LPA and LRA both provide criminal sanctions including penalties of both fine and imprisonment. Further, in some instances, liability can be passed to the director of the employing company.

KEY CONTACTS

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TURKEY

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Turkish Lira (TRY). 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 will only engage in market research in Turkey and not in any commercial activity, the activities can 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 (e.g., criminal and credit reference, 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. 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, temporarily, on call. All employees have the right not to be discriminated against due to their status.

**Independent contractor**

Independent contractors can be engaged directly by the company.

**Agency worker**

Companies may outsource agency workers for certain positions stipulated under the legislation. Establishment of a subcontractor relationship for auxiliary works for production of goods and services or dividable 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. Also, 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 agreements must be executed in writing, in order to be valid and binding:

- Definite-term employment agreement that will remain in effect for at least 1 year
- Employment agreement with a probationary period (maximum of 2 months)
- Employment agreement with a non-compete undertaking
- Employment agreement signed with foreign individuals
- Employment agreement for work on call
- Employment agreement for teleworking
Probationary periods

According to the 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.

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 executed in Turkish where such contracts are executed by and between employees who are Turkish citizens and businesses incorporated under Turkish law. However, employment contracts can be drafted in dual column format in Turkish and any other language where the Turkish version will be the prevailing language.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All.

Working hours

45 hours a week limit on working time and 11 hours daily.

Overtime

Overtime work is any work performed beyond 45 hours in a week. Employee's 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 TRY 2,558.40 for 2019.

Vacation

14 days' leave for 1 to 5 years (including 5th year) of employment; 20 days' leave for more than 5 but less than 15 years of employment; 26 days' 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 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 the 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 (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 can be deducted from the wage paid to a salaried employee paid 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 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 demand 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.

As per recent changes to the Labor Law, employees will 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 can 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 can be made either by the mother or father, but such leave may be used by only one 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.

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 five or more employees, it must execute a private pension plan agreement with one or more pension companies and must enroll its employees, who are younger than the age of 45 in the relevant pension plan(s). The employer must deduct the contribution fee (ie, 3% 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 (individuals or legal entities that determine the purposes and means of processing personal data - eg, employers) are required to be registered with the Data Controllers Registry.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

There are several provisions under separate laws governing transfer of employees from one employer to another:

- Turkish Code of Obligations No. 6098 (the TCO)
- Labor Law
- Turkish Commercial Code No. 6102 (the TCC)

The provisions under the TCO govern transfer of employment agreements 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 agreements in corporate transactions.

The application of above laws may differ depending on the nature of the transaction; whether the employees will be transferred through a spin-off 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 spin-off 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 spin-off is affected. Upon such notification, if the employees do not object to the transfer of their employment contracts, the transferee becomes their new employer following the effectiveness of the spin-off transaction.
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, his/her employment contract will be deemed terminated following completion of his/her notice period. In this event, the employee will be paid his/her outstanding salary and other labour entitlements (e.g., annual leave entitlements, premiums, bonuses etc.). 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. The importance of this matter is, 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 one employer to another, the employees’ prior written consent must be obtained. However, the TCO remains silent on what would happen, if the employee does not give consent to the transfer. As modern labor law’s main concern is protecting the 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.

EMPLOYEE REPRESENTATION

A trade union representing at least 1% 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% 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 at least 1 representative; 51 to up to 100 2 representatives; 101 to up to 500 3 representatives; 500 to up to 1,000 4 representatives; 1,001 to 2,000 employees 6 representatives; more than 2,000 8 representatives can be appointed.

TERMINATION

Grounds

Requirements for termination of an employment contract vary, depending on whether such contract has 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 (without waiting for the notice periods) of the employment agreement by the employer are classified under four 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 (e.g., an amount equivalent to the accrued but unused annual paid leave days, and any payment arising from workplace practice) and the Labor Law are payable. No notice is due, but severance may need to be paid (unless 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 agreement is employed in a company with 30 or more employees, and has a minimum seniority of six months, then the labor security provisions of the Labor Law will 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 can be terminated for any reason (but notice and severance pay are still required).

**Termination based on mutual consent**

Moreover, 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 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; 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% 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.

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 (notice pay).

There is no set garden leave concept under Turkish law. However, it can be agreed upon in the employment agreement.

Severance

An employee is only entitled to severance if he/she has 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 (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 not entitled to a severance payment upon voluntary resignation.

For each complete year of work (and pro rata for any incomplete year), the employee must be paid an amount equal to his/her monthly salary. The Labour 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...
TRY 6,017.60 for the first half of 2019 (the amount is indexed twice a year). Accordingly, even if the employee's salary for his/her 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 he/she has the opportunity to acquire valuable knowledge or trade secrets.

**Non-competes**

Non-compete undertakings:

- Must be limited to a certain period of time (i.e., maximum two 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" will be a valid territory for 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 reinstates the employee back to work, the employer shall make payment of up to 4 months’ total of the wages of the employee and other entitlements if the employer reinstates the employee in accordance the court’s decision. If the employer does not reinstate the employee within 1 month, it shall:

- Make payment of up to 4 months’ total of the wages of the employee and other entitlements
- Pay reinstatement compensation, to be not less than employee's 4 months' wages and not more than employee's 8 months' wages

In the calculation of the reinstatement compensation, only the basic wage of the employee shall be taken into consideration.

Failure to inform & consult

Subject to administrative fines.

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. Uganda Shilling (UGX). Member of the African Union (AU), so required to implement relevant AU Directives. 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 tax of up to 30% of the earnings and social security contributions of 15%, 10% being the employer’s contribution and 5% 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 can work in Uganda with a special pass or a work permit:

- A special pass is a short-term work authorization issued in tranches of 3 and 2 months, up to a maximum of 5 months. The Directorate of immigration is progressively phasing out special passes, and applicants...
seeking short-term work authorisation need to 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 will be 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 his/her 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. Part-time and fixed-term employees have the right not to be discriminated against on the basis of their employment status. 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 would indicate that an individual is an employee. Casual employees can only be engaged for up to 4 months.

**Independent contractor**

Independent contractors can 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% withholding tax. However, a foreign company engaging an independent contractor has no obligation to withhold tax. The independent contractor would, however, be required to pay the tax.

**Agency worker**

Agency workers are common. The agency will be 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 be 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 which 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

• The length of notice in excess of that provided by the this 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. 3-6 months’ duration is common.

Policies

Written occupational health and safety policy where the employer has at least 20 workers at a workplace, sexual harassment policy where the employer has more than 25 employees, and 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 his/her 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 his or her final agreement to it.

**MINIMUM EMPLOYMENT RIGHTS**

Employees entitled to minimum employment rights

All.

**Working hours**

48 hour a week limit on working time. Employer may agree with 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 will be 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**

Under the Minimum Wages Act the Minister in charge of Labour appoints a minimum wage board whenever he or she considers that it may be desirable to fix a minimum wage in a given sector. Additionally an employer and employee can negotiate a minimum wage subject to ministerial approval. Where no agreement is reached any interested party may refer the matter to the Industrial Court which shall determine the minimum wage applicable.

**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 up to 2 months, 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 which he/she is entitled to 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.

Every employer shall pay male and female equal remuneration for work of equal value.

BENEFITS & PENSIONS

Currently, no benefits required above those covered under social security contributions.
DATA PRIVACY

A Data Protection and Privacy Bill has not yet been passed into law. The right to privacy, however, is enshrined in the 1995 Constitution of the Republic of Uganda.

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 (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 such as reaching the retirement age, expiry of contract, death, medical incapacity, redundancy etc. Dismissal is permissible for verifiable acts of misconduct or poor performance. A fair process has to be followed. Fair process includes substantive and procedural fairness. In other words, the employer must have reasons for dismissal, and due process has to 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 (extremely serious) misconduct. Longer notice can 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 otherwise than from the employee’s own serious and willful misconduct
- Employee’s termination of contract on account of physical incapacity not occasioned by his/her own serious and willful misconduct
- Termination by reason of death or insolvency of the employer
- Termination by a labor officer following the inability/refusal of the employer to pay wages
- 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 can be enforced if reasonable. They need to 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 6-12 months. Not yet tested in this jurisdiction.

Employee non-solicits

Permissible. Usually 6-12 months.

WAIVERS

Enforceable.

REMEDIES

Discrimination

Uncapped compensation, damages are at the court's discretion.

Unfair dismissal

Basic 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 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 UGX 20,000.

CRIMINAL SANCTIONS

Violation of certain provisions of the Employment Act can 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


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 first-time employment, their labor book. On a case-by-case basis, employers can request employees to provide documents confirming education (specialty, qualification), health status, etc., to confirm compliance with requirements established for a specific profession or 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 labour 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/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, foreigners who obtained a status of refugee according to Ukrainian law, etc. 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 and Trade 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:

- indefinite (most commonly used)

- fixed-term (restricted to specific cases, e.g., when an employee is hired to perform the duties of a temporarily absent employee, is hired to a specific position (some state officials, judges, etc.), 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 can 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 can engage agency workers only if:

- such engagement is directly allowed by a collective agreement and 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 position, duties, employment commencement date, place of work, working time, probationary period, wages, etc.

**Probationary periods**

Generally, probationary periods may not exceed 3 months (they can be 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 approved by the trade union (if any). If there is no trade union, internal labor regulations must be approved by the elected representatives of the employees’ general meeting.

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 (5 working days per week, 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 can be calculated not on a weekly basis but based on another period (month, half a year, etc.). In such cases, the working hours would be considered as 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, underage employees, etc.), the maximum number of working hours per week is less than 40 hours.

Some categories of employees (e.g., pregnant women, women who have children under 14 years old, etc.) 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/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 defence, prevention of natural or civil disasters, industrial accidents and 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 work continuation, if the employee who starts his/her 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 his or her shift 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 (e.g., pregnant women, employees under 18, etc.) or may only be engaged in overtime work with their consent (e.g., women who have children of the age from 3
Wages

Statutory minimum wages are established by law on a yearly basis. As of January 1, 2018, the minimum wage is approximately US$130 (UAH 3,723) per month for full-time employment or US$0.83 (UAH 22.41) per hour.

Vacation

The general statutory minimum annual vacation is 24 calendar days. Special categories of employees (eg, employees under 18 years old, some categories of disabled individuals, etc.) and/or employees working under specific positions.Regimes/conditions of work (eg, employees working under non-standard working hours regime, etc.) are entitled to additional vacation days. There are additional statutory paid and non-paid social vacation days. For instance, women who have two or more children under 15 years old or have a disabled child 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

Employees are entitled to 5 days of paid sick leave. After 5 days of sick leave (compensated by the employer), compensation for the leave is made by the State Social Insurance Fund (by transfer of the compensation to the employer’s special bank account). Normally, sick leave is granted for the period necessary for full recovery, and employers generally cannot dismiss employees during the sick leave period.

At the end of the sick leave, employees must present employers with a certificate from a medical institution as proof.

Maternity/parental leave & pay

Women are entitled to a maternity leave of 126 calendar days (70 calendar days prior to childbirth and 56 afterwards) generally, or 140 calendar days (70 calendar days prior to childbirth and 70 afterwards) in the case of the birth of two or more children or complications in childbirth. The amount of compensation depends on the employee’s salary as well as continuity of her 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 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 can 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/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: 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, age, etc.

**BENEFITS & PENSIONS**

Employers must make regular deductions from employees' salaries for contributions to the state pension fund. Private pension plans can 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, perform statutory reporting, etc.).

Processing of sensitive data (eg, health status data, data related to religious beliefs, political views, etc.) 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, etc., 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 (merger, spin off, etc.), employment continues with the company or its successor without change in terms and conditions. In case of an asset deal, however, employment will need to be terminated and rehired.

**EMPLOYEE REPRESENTATION**

Local trade unions or employees' representatives are elected at the general meeting of employees and act as employees' representatives. There is no minimum headcount before employees can create a trade union. 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 / approve, before employers take certain employment actions, including redundancy, dismissal of a trade union member, introduction of an unusual working regime, etc. On the other hand, elected employee representatives have limited authority as compared to trade unions.

Under Ukrainian laws, each Ukrainian entity that has employees must conclude a collective agreement with its employees. 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 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 (redundancy, non-compliance of the employee with the positions due to lack of qualification or issues with health, systematic violation of employment obligations, etc.)
- 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, for some categories of employees it can be different)

For the first two, 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 may not be dismissed except in the case of the company’s liquidation:

- pregnant women
- individual with children under 3 years old
- single parents with disabled children or children under 14 years old

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, discovered inconsistency of the employee with the occupied position
• an employee who is accused of guilty actions in relation to 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 his or her position

In case of liquidation, reorganisation, 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 one-month period

• at least 10% of the employee population in companies with 101 to 300 employees during a one-month period

• at least 20% of the employee population (regardless of the total number of employees) during a three-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 (e.g., 2-month notice for redundancy, no notice period for termination based on the mutual consent of the parties, 2-week notice for termination if initiated by the employee, etc.). The notice period for termination based on the employer’s initiative may be increased under the employment agreement/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. For specific categories of the employees (e.g., CEOs), the provisions similar to garden leave concept may be included in the employment contracts.

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 his or her employment under changed work conditions, non-compliance of the employee with the position or reinstatement 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 his or her authority as the company’s officer (e.g., CEO)

The applicable collective agreement or employment contracts can 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, one month’s average salary must be paid as severance.

**POST-TERMINATION RESTRAINTS**

Generally unenforceable. In practice, restrictive covenants can be included in separate (non-employment) agreements with top management level employees.

Non-competes

Generally unenforceable.

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

Reinstatement 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 reinstatement 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 approx. US$13,000
- Administrative fines for violations of the Code of Administrative Offenses
- 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 one month)

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**UNITED ARAB EMIRATES**

**LEGAL SYSTEM, CURRENCY, LANGUAGE**

Federal and Civil legal system; employment matters are governed by Federal Law No. 8 of 1980 (the Labor Law) (as amended). There are also relevant provisions in the Penal Code and Civil Code. Dirhams (AED). Official language is Arabic.

**CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP**

A foreign entity cannot directly engage employees in the UAE. It needs to 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 other way around this would be 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 provide 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. In the 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

Unlimited or fixed term. 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 the MOHRE standard form offer letter, containing the key terms and conditions of employment, to employees.

Employees are then required to sign the MOHRE government employment contract to obtain their work permit (or employee ID card) and residence visa, (in the case of non-UAE/GCC nationals only). 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 MOL 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.
Policies

There are no mandatory policies. If an employer wants to rely on a disciplinary policy and procedure document onshore, then technically this must first be lodged with the MOL. 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 also have a standard form of contract used to obtain the employee’s work permit and residence visa. 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 issued now 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 the 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 (those aged 15 to 18) and women.

Working hours

8 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 to be paid to employees in the UAE save in respect of Emirati employees where a fairly low minimum threshold of AED 5,000 per month applies for employees (degree holders) to count for Emiratisation purposes.

Vacation

2 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

After 1 year’s continuous service, 45 calendar days’ maternity leave at full pay. Before completion of 1 year’s service, maternity leave is 45 days at half pay. A pregnant employee can take a further 100 consecutive or non-consecutive days 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 the UAE.

DISCRIMINATION

Since August 2015, legislation has been in force which was primarily designed to combat religious contempt and intolerance. However, through the introduction of the wide definition of “discrimination,” it could 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 the 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.

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**

In respect of UAE national employees and GCC national employees, the employer is required to enrol in and make contributions themselves and employee deductions for the state pension funds. High earners in the UAE and GCC are entitled to an end-of-service gratuity (EOSG) for their earnings over AED 50,000. 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. The EOSG is reduced if the employee resigns within the first 5 years of service and is forfeited if the employee is summarily dismissed for one of the reasons under Article 120 of the UAE Labor Law.

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 (i.e., 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**

With the exception of the Dubai International Financial Centre Free Zone, there are no clear laws in the UAE 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 for the processing of personal data from the employee to the extent necessary to address the privacy protections set out in UAE law, including the protections set out in the UAE Penal Code, Cyber Crimes laws and the UAE Constitution.

**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. Both contracts of employment and the residence visas and work permits need to 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, 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 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 required before the employment of a UAE national can be terminated.

**Mass layoff rules**

No mass layoff rules exist.

**Notice**

30 days' statutory minimum notice. 3 months maximum permitted notice.

**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 his or her home country (unless (i) dismissal is attributable to employee and the employee has the funds to pay his/her 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 and potentially bonus and/or commission, but not allowances) 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, because 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. Starting from March 2017 there is a possibility 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, i.e., 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 AED 500,000 and a maximum of AED 1 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.
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UNITED KINGDOM

LEGAL SYSTEM, CURRENCY, LANGUAGE

Common Law. Pound Sterling (GBP or £). Member of the EU and required to implement relevant EU Directives. NB, however, the UK is scheduled to leave the EU on March 29, 2019. At present, it is intended that there will be a transitional period until December 31, 2020 during which time the UK will still be subject to EU rules. However, the terms of the withdrawal agreement have not yet been approved by the UK Parliament and significant uncertainties remain over the final terms which will be agreed. A no-deal exit is also a possibility.

English language.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity can engage in the UK with proper payroll registrations, subject to business and corporate tax planning considerations. Withholdings for pay-as-you-earn (eg, social charges — up to 13.8% employer portion and 12% employee portion up to a certain threshold and 2% thereafter) and income tax (up to 45%) 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 (eg, solicitors, chartered accountants), a criminal records check.

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 with applicant consent.

IMMIGRATION
Until the UK leaves the EU (planned to be March 29, 2019), nationals of the EEA (European Economic Area) and Switzerland have the right to work in the UK. For other non-UK nationals, immigration permission is likely to be required. Companies employing non-EEA/Swiss nationals may be required to register with the UK Border Agency. Post-Brexit, a new immigration regime will apply. EU nationals who are already resident in the UK on March 29, 2019 will be able to stay in the UK indefinitely and must apply for either pre-settled or settled status under the EU Settlement Scheme. The immigration status of EU nationals who come to the UK from March 30, 2019 will depend on the terms of the UK’s withdrawal agreement with the EU. EU nationals who do not qualify for a status under the EU Settlement Scheme and non-EU nationals will be subject to a new skills-based immigration system which is expected to apply from January 1, 2021.

**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 can 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., he 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 typically will be 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. However, note that within 2 months of commencement of employment, employees must be provided with certain minimum terms in writing. From April 2020, employers will be required to provide more detailed information to both employees and workers.

**Probationary periods**

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

**Policies**

Written health and safety policy and disciplinary and grievance policy 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></th>
<th>Rate as of April 2018 (£)</th>
<th>Rate as of April 2019 (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>25 years old or over</td>
<td>7.83</td>
<td>8.21</td>
</tr>
<tr>
<td>21 - 24 years old</td>
<td>7.38</td>
<td>7.70</td>
</tr>
<tr>
<td>18 - 20 years old</td>
<td>5.90</td>
<td>6.15</td>
</tr>
<tr>
<td>16 -17 years old</td>
<td>4.20</td>
<td>4.35</td>
</tr>
<tr>
<td>Apprentices</td>
<td>3.70</td>
<td>3.90</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 £92.05 per week (£94.25 as of April 2019) (generally funded by the employer).
Maternity/parental leave & pay

52 weeks of maternity leave, paid for 39 weeks (90% of pay for first 6 weeks, then statutory rate), and right to return to work. 2 weeks of paternity leave at birth (paid at statutory rate subject to eligibility requirements). New parents can 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 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

Since May 2018, the UK has been subject to the General Data Protection Regulation (GDPR) and the Data Protection Act 2018, which has introduced significant new obligations and onerous sanctions for employers. Under this new regime, it is extremely difficult for employers to rely on consent as a basis for processing employee data and other legitimate grounds generally need to be identified.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Automatic transfer under the EU Acquired Rights Directive/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 (manufacturing, transport and the public sector). 25% 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 two 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, etc.).

Restricted or prohibited terminations

No statutory prohibitions.

Third-party approval for termination/termination documents

Not required.

Mass layoff rules

Yes, 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 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 (extremely serious) misconduct. Longer notice can 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; 1.5 week's pay per year of service, for service age 41 and above. "Pay" capped at £508 per week from April 2018. The rate will increase in April 2019. 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 can be enforced if reasonable. Need to 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 3-6 (maximum of 12) months, depending on the circumstances.

Customer non-solicits

Permissible in specific circumstances. Typically no longer than 3-6 (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 + injury to feelings compensation of between £600 – 33,000.

It is also possible to claim a declaration of rights or a recommendation (aimed at reducing impact of discrimination).

**Unfair dismissal**

Basic award, based on claimant's age and length of service (currently capped at £15,240) + compensation based on the claimant's financial loss (currently capped at £83,682) or 52 weeks' pay – whichever is lower). The cap is expected to increase in April 2019. In exceptional cases (e.g., whistleblowing dismissals), compensation is uncapped.

Reinstatement or reengagement is possible but rare.

Since April 5, 2014, it has been possible for the tribunal to award a payment for "aggravating features" of between £100 and £5,000. This is paid to the government. In December 2018, the government announced its intention to increase the maximum level of penalty that tribunals can impose for aggregated breaches to £20,000, but this has not yet come into force.

**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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UNIVERSAL 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. US Dollar ($). English.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity can 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 (e.g., 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/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.

IMMIGRATION
All employees must be legally authorized to work in the US, whether by citizenship, permanent residence (green card) status, or a valid visa (which often requires sponsorship by the employer). Within three 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 (e.g., 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**

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/retaliatory and does not otherwise violate the law. Certain jurisdictions have either superseded the general rule of at-will employment by statute (e.g., Montana) or have adopted a statutory severance scheme for terminations without cause (e.g., Puerto Rico).

**Independent contractor**

Independent contractors can be engaged directly as individuals, or through an entity (e.g., LLC, 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 NLRB (National Labor Relations Board) – have provided more employer-friendly guidance on independent contractor classifications, while certain states’ legislation and case law are becoming more employee and contractor friendly (e.g., California).

**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 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 will 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 and state laws. Anti-harassment, discrimination, and retaliation policies are highly recommended to be included in an employee handbook, and 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 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 US$455/week (US$23,660 annually) and must meet the applicable "duties" test for the exemption at issue. However, the DOL has issued a proposed rule that would increase the minimum salary threshold to qualify for exemption from the overtime provisions of the FLSA to US$679/week (US$35,308 annually), which would become effective January 1, 2020. Some states impose additional wage and hour requirements above the FLSA requirements (eg, Oregon); 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 (e.g., airline pilots, 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 one day off each week.

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. 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 (e.g., more than 8 hours per day).

Wages

All non-exempt employees must be paid at least the federal minimum wage, which presently is US$7.25 per hour. Some states and cities have higher minimum wage requirements, such as California US$11.00 or US$12.00 per hour (depending on employer size), with scheduled annual increases up to US$15.00 per hour by 2022 or 2023 (depending on the size of the employer) and New York (ranging from US$11.10 to US$15.00 per hour, with incremental raises to US$12.50 or US$15.00 per hour by the end of 2019, 2020 or 2021, depending on the size of the employer and the location within the state). Many states and territories have a current minimum wage above US$10.00 per hour (and many cities have even higher current minimum wages) and/or have passed legislation that will raise the minimum wage above US$10.00 per hour within the next 5 years, with several raising minimum wage to US$15.00 per hour.

Vacation

There is no statutory requirement to provide paid vacation or holiday to any employees. Most employers will 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.

Sick leave & pay

There is no federally mandated right to paid sick leave. Employers with 50 or more workers generally have to 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 his/her 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).

Certain states and local jurisdictions (e.g., Washington state, California, New York City, Dallas) have established what is likely the beginning of a trend imposing more generous leave requirements and requiring additional benefits like paid sick leave.

Maternity/parental leave & pay

There is no federally mandated right to paid maternity/parental leave. Under the FMLA, employers with 50 or more workers generally have to 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. 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, potentially, sexual orientation), national origin – Title VII of the Civil Rights Act (Title VII); age (over 40) – 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, and include: creed, sexual orientation, marital status, domestic partnership status, military status, domestic violence victim status, arrest record, conviction record, alienage, citizenship status, and unemployment status. Some states and local jurisdictions have banned asking candidates about compensation history in an attempt to reduce pay inequality.

The US Supreme Court is expected to rule on whether federal employment discrimination laws protect LGBT employees. The Equal Employment Opportunity Commission (EEOC) has taken the position for years that LGBT rights are covered, while the federal Circuit Courts have split on the issue.

At least 11 states (eg, California, New Jersey, New York) have passed legislation in light of the #MeToo movement, strengthening protections for women and against sexual and gender harassment and in some states restricting the effect of non-disclosure provisions in sexual harassment and sex discrimination matters.

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.
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 can be transferred through termination and rehire.

EMPLOYEE REPRESENTATION

Trade unions are common in certain sectors. The US private sector had a unionization rate of 6.4% in 2018, compared with 6.5% in 2017. 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 (eg, discrimination, 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 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 with 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

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).

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 will be enforced.

Non-competes

Enforcement of non-competes varies from state to state. 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 (eg, California, Colorado, North Dakota, Oklahoma, Oregon, Washington and Massachusetts) prohibit or otherwise strictly limit non-competes in the employment context by statute, except in connection with the 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 will 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 his or her 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 wage and hour laws. 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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VENEZUELA

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Venezuelan Bolívar (VES). Spanish and Venezuelan native languages.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity can engage employees in Venezuela only if it sets up, at least, a representative office, and obtains payroll and labor registrations. Withholdings for pay-as-you-earn (eg, social charges from 9% to 11%, with a ceiling of 5 minimum wages and income tax of up to 34%) to be done through payroll.

PRE-HIRE CHECKS

Required

There are no mandatory requirements, apart from immigration compliance for foreign employees.

Permissible

Reference and education checks are common and permissible with applicant consent. Criminal records checks are generally not permissible, because Venezuelan law prohibits discrimination based upon criminal records.

IMMIGRATION

Non-Venezuelan nationals require immigration permission. At least 90% of the payroll in companies with 10 or more employees should be held by Venezuelan nationals. Certain job positions require engagement of a Venezuelan national (eg, industrial relations and/or personnel managers in HR, ship or airplane captains, foremen and similar positions), subject to some exceptions. Non-Venezuelan national employees may hold these job positions when:

- They have Venezuelan descendants
- They are married to a Venezuelan
• They have set up a domicile in Venezuela
• They have resided in Venezuela for 5 or more years

HIRING OPTIONS

Employee

Indefinite, fixed-term and determined work contract for a specific project. Part-time and full-time.

Independent contractor

Independent contractors are allowed, as long as the service to be performed under the contract is carried out using the contractor's own resources and employees. Self-employed independent contractors are paid gross and are responsible for their own tax contributions.

Agency worker

Severe restrictions on agency workers are in force, since outsourcing is generally prohibited. Failure to comply with these obligations may result in joint liability for all employment related obligations, when services are "inherent" or "connected" to the beneficiary's business.

EMPLOYMENT CONTRACTS & POLICIES

Requirements

A written employment contract is required. It must contain the following information: name, nationality, age, legal status and identity card number of the parties involved; description of services rendered; start date of employment; type of contract; duration; working hours; the wage stipulated; workplace.

Probationary periods

There are no probationary periods expressly stated by law. However, because it is possible to dismiss an employee with no justification during the first 30 days of services, this period has been deemed an unofficial probationary period.

Policies

A written health and safety policy is mandatory.

Third-party approval

Approval from the health and safety authority is required for the written health and safety policy. There are no other approval requirements for employment documents.

LANGUAGE REQUIREMENTS
All documents addressed to employees must be in Spanish or one of the Venezuelan native languages (if applicable, where the employee speaks that language), or can be bilingual.

**MINIMUM EMPLOYMENT RIGHTS**

**Employees entitled to minimum employment rights**

All of them.

**Working hours**

In general, the maximum number of working hours without overtime pay for a day shift is 8 hours per day and 40 hours per week. In the case of a mixed shift, the limit is 7.5 hours per day and 37.5 per week. For night shift work the limit is 7 hours per day and 35 hours per week. When a mixed shift has 4 or more night hours (between 7:00 p.m. and 5:00 a.m.), it is deemed entirely as a night shift.

Upper management employees, as well as inspection or supervisory employees, may exceed the daily or weekly limits, as long as:

- The workday does not exceed 11 hours
- The total hours worked in a period of 8 weeks do not exceed an average of 40 hours per week
- The employee is entitled to 2 continuous days of paid rest per week

**Overtime**

Overtime must be paid with a surcharge of at least 50% over the normal salary value for the corresponding ordinary shift. An employer may not require its workers to work more than 10 hours overtime per week or more than 100 hours overtime per year.

**Wages**

Venezuela has minimum wages periodically adjusted by the government. As of September 1, 2018, the legal gazette established the minimum wages in Venezuela for employees in the private and public sector as VES 1,800.00 per month; and for adolescents and apprentices, the minimum wage is VES 1,350.00 per month. In January 2019, President Maduro announced an increase in the minimum wage to VES 18,000.00. Although the increase was not published in the official gazette (so is not in force) most employers in Venezuela are paying at least VES 18,000.00 to their employees.

**Vacation**

Employees are entitled to 15 working days of paid vacation up to completion of 1 continuous year of service, plus 1 additional working day for each subsequent year of service, up to a maximum of 30 working days per year.

In addition, employees are entitled to receive, during vacation, an additional vacation bonus equivalent to 15 days of salary, plus 1 additional day’s salary for each subsequent continuous year, up to a maximum of 30 days of salary per year of salary.
Sick leave & pay

The employer must pay salary only for the first 3 days of sickness; after this period, the employee will receive an indemnity from the social security in lieu of salary.

Maternity/parental leave & pay

Women are entitled to maternity leave of 6 weeks prior to giving birth and 20 weeks thereafter. In the event that pre-natal leave is not fully used, the remaining portion is added to the post-natal leave. If a female employee adopts a child under 3 years of age, she is entitled to a maternity leave of 26 weeks. There is no obligation for the employer to pay the employee during these periods of leave, but some employers do so to a certain extent in accordance with their internal policies, and the employee receives an indemnity from the social security authorities.

The father of a child (or any male employee in case of adoption or family placement of a child under 3 years of age) is entitled to paternity leave of 14 days, which is extended by another 14 days if the child is seriously ill or the mother’s health is in danger due to health complications. In cases of multiple births, paternity leave will last 21 days, and if the child’s mother dies, paternity leave will last 12 weeks. These periods of leave are paid by the social security system.

Female employees are also granted the right to nurse for a maximum of 2 years after the birth of the child, specifically:

- if within the workplace there is a nursing school or nursing ward, female workers will have a 30 minute break twice a day to nurse their child

- if there is no area designated within the workplace to nurse their children, female employees will have a 90 minute break twice a day for that purpose.

The total extent of the nursing entitlement will depend on a monthly certificate issued by a medical institution noting that the female employee is still nursing her child.

DISCRIMINATION

Discrimination, exclusion, preference or restriction in employment based on race, sex, age, legal status, religion, political opinion, nationality, sexual orientation, persons with disabilities, social origin and criminal records are prohibited. The non-discrimination principle in employment also includes the pre-contractual relationship. Employers may not include discriminatory provisions in job applications or employment agreements. No persons shall be discriminated against, with regard to their right to work, due to having a criminal record.

BENEFITS & PENSIONS

Venezuelan labor laws establish an obligation to deposit a "guarantee of severance" quarterly. This deposit must be made in a severance fund, a company account or bank trust, and the amount is based on the salary of the employee (see under "Severance" below).
The Workers’ Food Law obligates employers to grant a balanced meal during the workday to all employees. This benefit can be delivered by installing eating facilities in locations close to the workplace, hiring companies specializing in meal supply, or granting electronic cards, coupons, or tickets to the employees. The Venezuelan government establishes a monthly amount equivalent to the value of VES180.00.

**DATA PRIVACY**

There is no general legislation on data protection in Venezuela. However, employees should be notified of personal data processing, and in certain cases, they must give consent. In cases involving medical checks, the employee has the right to request the confidentiality of the results.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

When a transaction involves a transfer of assets, a substitution of the employer will take place, and the employees, Labor Ministry and unions (if any) must be notified. The consent of employees is not necessary. However, employees may retire with justified cause within 3 months from receipt of the notice of transfer, where the substitution is deemed contrary to their interests. In this case, employees are entitled to an indemnity for unjustified dismissal, for the amount of their severance entitlement.

The substitute employer may not reduce the benefits granted to transferred personnel, and must recognize prior periods of service for all legal purposes.

**EMPLOYEE REPRESENTATION**

Every employee has the right, without previous authorization, to form or affiliate a trade union, with functional autonomy and protection by the government. Trade unions are common in large or medium companies (more than 500 employees).

**TERMINATION**

*Grounds*

Employees may either be subject to so-called job stability (*estabilidad*), or protected by the bar against dismissal (*inamovilidad*), both of which significantly limit the scope for termination.

*Job stability*

Although Venezuelan labor laws set forth a stability procedure, it is not currently applicable, due to the Presidential Decree on Bar Against Dismissal having been extended to all employees.

Employees covered by the stability procedure might be dismissed with justified cause, but after the dismissal, the employer must file a "participation of dismissal" before a labor judge, explaining the facts and legal causes for the dismissal. Legal cause might include, among others reasons: misconduct; defamation of the employer; lack of due
care or negligence, affecting health and safety at work; unjustified absence during 3 working days in a month; material damage to working machines or tools, caused intentionally or by lack of due care; disclosure of professional or trade secrets; serious failure of employment obligations; or sexual or workplace harassment.

In general, all employees are protected by job stability, except upper-management employees.

Bar against dismissal

Protected employees shall not be dismissed without justified cause and previous authorization of the Labor Inspector. An employee is entitled to claim reinstatement and back pay when dismissed without authorization.

Employees protected by inamovilidad are those, among others, whose employment relationship is suspended due to work accidents, maternity leave, etc., or employees enjoying certain union privileges. Note, however, that since 2003, this protection has been extended to all employees (excluding upper-management employees) by Presidential Decree. The current decree is in force until December 28, 2020.

In practice, most terminations are implemented through mutual consent.

Third-party approval for termination

See above, under "Grounds."

Mass layoff rules

A mass layoff takes place when a number of workers equal to or larger than the following are terminated within 3 months (or longer in critical circumstances):

- 10% of the employees in a company with more than 100 employees
- 20% of the employees in a company with 50 or more employees
- 10 employees in a company with fewer than 50 employees

In the case of a mass layoff, the Labor Ministry may order the employer to stop the dismissals based on social interests, and to reinstate the employees immediately to their positions. Contempt of the Labor Ministry’s order may result in economic and/or criminal sanctions.

There are special administrative proceedings for mass layoffs based upon financial difficulties. This procedure starts with an employer’s petition filed before the Labor Inspector, along with all evidence that supports the decision regarding mass layoff.

Notice

There is no legal obligation for employers to give advance notice, since employees are protected by the stability procedure and bar against dismissal. Employees can give notice, but if they do not, they are still entitled to receive labor benefits up to the date of termination of employment relationship.

Statutory right to pay in lieu of notice or garden leave
NA.

**Severance**

Employees must deposit a guarantee of severance quarterly, which must be equivalent to 15 days of salary, based on the salary of the last month of the quarter. Additionally, employers must deposit 2 additional days of salary after the first year, and for each subsequent year, up to the amount of 30 accumulated days.

In case of termination of the employment relationship, the employer must calculate the severance payment based on 30 days of salary per year or per portion greater than 6 months of service. This calculation must be based on the salary received by the employee at the termination of the employment relationship. The worker has the right to receive the highest amount between those two sort of compensations.

**POST-TERMINATION RESTRAINTS**

**Non-competes**

As long as it has been agreed in writing at the beginning of the employment relationship, is based on justifiable reasons, and remuneration to the employee is set forth (in an amount agreed between the parties), the employer may impose a post-termination non-compete of up to 6 months after the termination of the employment relationship.

**Customer non-solicits**

Permissible in specific circumstances (see non-competes above).

**Employee non-solicits**

Permissible in specific circumstances (see non-competes above).

**WAIVERS**

Enforceable, but employees must be represented by counsel to sign the settlement agreement, and the agreement must be approved by a Labor Judge or Inspector to be enforceable.

**REMEDIES**

**Discrimination**

Any employee who is a victim of discriminatory acts may file an action before the Labor Courts.

**Unfair dismissal**

In case of unfair dismissal, protected employees are entitled to claim reinstatement and back pay before the Labor Inspector.
CRIMINAL SANCTIONS

Failure to comply with the mass layoff requirements or administrative decisions of reinstatement and back pay may result in imprisonment from 6 to 15 months. In practice, prosecution is not common.

KEY CONTACTS

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LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Vietnamese Dong (VND). 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 (17.5%, including 3% to the sickness and pregnancy fund, 0.5% to the work-related accidents and occupational disease fund, and 14% to the retirement and survivor ship fund), health insurance (3%) and unemployment insurance (1%), as well as trade-union fees (2%), and withhold the employee portion of the social insurance (8%), health insurance (1.5%), unemployment insurance (1%), trade-union fees (1%, if the employee participates in the grass-roots trade union). The social insurance and health insurance contributions are capped at 20 times the basic monthly salary, which is VND 1,490,000 (approximately US$64), while the unemployment insurance contribution 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 achieve tax finalization for all kinds of taxable income.

In term of compulsory insurance contributions for foreign employees who have a work permit or practicing license; and an employment contract with an indefinite term or a term of one full year or more, Vietnam-based employers currently pay social insurance premiums of 3.5% together with health insurance contributions of 1%. The foreign employee will pay 8% of their monthly wage to the superannuation and survivorship fund from January 1, 2022.

The employer must consult any organization representing workers at the enterprise (most commonly a trade union) before establishing, amending or supplementing the payroll and sending the payroll information to the district state administrative body for labor. The obligation to send payroll information to the local Department of Labor, Invalids and Social Affairs (DOLISA) arises when the payroll is first drawn up and after each future amendment. An employer with fewer than 10 employees is exempt from submitting wage scales, wage tables and labor norms to the local labor authority at the district level.
PRE-HIRE CHECKS

Required

Before hiring foreign employees to work in Vietnam, employers must obtain written prior approval from the Ministry of Labor, Invalids and Social Affairs (MOLISA).

Possessing a valid work permit issued by the provincial labor authorities is a compulsory condition for foreign citizens to work in Vietnam, except for where an exemption applies. Legal sanctions for the employer of a foreign citizen without a permit include fines, and the authorities may even suspend a business’ operations. A foreign citizen working in Vietnam without a work permit risks deportation. Usually, the employer will assist the employee to obtain a work permit, and where this is not the case, it is in the employer’s interests to verify the existence of a valid work permit.

Application for prior written approval or a work permit can be submitted physically, via post or electronically at http://dvc.vieclamvietnam.gov.vn/.

In addition, a visa/resident card is required for foreign nationals entering Vietnam to work.

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 2012. However, specific regulations do exist in more heavily regulated fields, such as aviation, security and medicines. 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 is 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 can be expelled from Vietnam. A work temporary resident card and a work visa will be granted based on the validity of the work permit.

HIRING OPTIONS

Employee

Individuals can be employed on an indefinite-term contract, a definite-term contract, a seasonal contract or a contract for a specific job (which is for less than 12 months).

Under a definite-term contract, the parties agree to the term and the time of termination of the contract for a period between 12 and 36 months.
Seasonal labor contracts and specific job contracts are used for work that is irregular and where the duration of the job is less than 12 months. It is prohibited for such a contract to be used for work which is regular and has a duration of 12 months or more, except to temporarily replace an employee who is absent for military service, is on maternity leave or sick leave, is on leave as the result of a work-related accident, or is on leave for another temporary reason (Article 22 of Labor Code 2012).

**Independent contractor**

An individual can provide services to an enterprise or organization in Vietnam as an independent contractor. The provision of services as an independent contractor, however, falls under the jurisdiction of the 2015 Civil Code 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.

There is no legal provision regulating when an employer can or cannot use an employment contract or a service contract. However, if a contract contains the features more customarily found in an employment relationship (for example, where the contractor is subject to the employer’s working hours, or to disciplinary actions for a breach of the work rules), the contract will be treated by the authorities as an employment contract, even if it is referred to as a service contract. As a general rule, the use of a service contract for permanent and long-term work is not encouraged, and can be viewed by the labor authorities as a circumvention of employment-related requirements, such as contributions to statutorily required insurance for employees.

**Agency worker**

An agency worker is an employee recruited by an enterprise licensed to conduct employment outsourcing who thereafter works for another employer (sub-leasing employer). Such employee is subject to management by the direct 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. There is no requirement for an agency worker to be given employment terms equivalent to those of regular employees of the sub-leasing employer.

**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

The Government of Vietnam has passed new legislation which removes the requirement for certain mandatory provisions to be included in employment contracts. The legislation also allows parties to refer to an employer’s internal labor regulations, collective labor agreements, other internal policies or relevant laws instead of specifying these in the labor contract. These items include:

- Salary review and increases
- Working and rest time
- Labor protection equipment and
- Social, health and unemployment insurance
Probationary periods

Permissible, if agreed between the parties. During the probation period, the employer should pay the employee no less than 85% of the full-time wage. The probation period must not exceed 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 seasonal labor contract may not be subject to a probationary period. Either party can terminate employment during the probationary period without notice.

Policies

Enterprises with 10 or more employees must have written these regulations. The employer must consult with the relevant collective body regarding written internal labor regulations. 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
- Protection of assets and confidentiality
- Disciplinary procedures and penalties

The relevant collective body will be a trade union or a labor federation. It is not compulsory to establish a trade union at company level, but one can be established upon the voluntary participation of at least 5 employees. The labor federation is the executive committee of trade unions at regional level.

The employer must consult the labor federation about its internal labor regulations if a grassroots trade union has not been established. If there is no trade union in an enterprise, but the law requires trade union involvement, the employer must ask the labor federation to set up a temporary union executive committee to participate in the procedure.

There have been recent changes to labor discipline procedures following the government passing new legislation which alters the requirements for employers inviting an employee to and an employee confirming attendance at a disciplinary meeting. The new decree also provides that the authorized representative of the employer can sign and issue a labor disciplinary decision on all types of disciplinary measures, instead of just reprimands under the previous regulations. Previously only the legal representative had this power.

Third-party approval

An employer must register its internal regulations with the provincial DOLISA where the company is located. Each province has a DOLISA, but there is one MOLISA in Hanoi. While MOLISA is the higher authority, regulatory interpretations may differ between DOLISAs.
LANGUAGE REQUIREMENTS

No statutory language requirements exist.

MINIMUM EMPLOYMENT RIGHTS

Employees entitled to minimum employment rights

All.

Working hours

The maximum number of working hours is 8 hours per day and 48 hours per week.

Overtime

Employers may require an employee to work overtime, but only when:

- The employee agrees
- The overtime hours do not exceed 50% of the normal working hours in 1 day
- 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, 30 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 his or her current work as follows:

- On normal days, at a rate of at least 150%
- On weekly days off, at a rate of at least 200%
- On holidays and paid leave days, at a rate of at least 300%, exclusive of the individual's normal daily wage

Any employee working at night shall be paid an additional minimum 30% of the wage calculated at the wage unit price or wage for such work conducted during a normal day time.

Wages
An employee’s wage must not be lower than the minimum regional wage provided by the government. The current minimum wage ranges from VND 2,920,000 per month (approximately US$126) to VND 4,180,000 per month (approximately US$180) depending on the location. From July 1, 2019, the basic monthly salary (also known as general minimum salary) will be VND 1,490,000 (approximately US$64).

**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 for employees working in heavy, toxic or dangerous jobs, and for employees in places with harsh living conditions as defined in the list issued by the MOLISA, and for employees who are minors or disabled persons
- 16 working days for employees working in extremely heavy, toxic or dangerous jobs, and for employees in places with especially harsh living conditions 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 on 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% of salary 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)
- 60 days per year (if the employee has contributed to the social insurance fund for more than 30 years)

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, or more than half the duration of the contract in the case of a seasonal or specific job contract with a duration of less than 12 months.

**Maternity/parental leave & pay**

Women are entitled to maternity leave of 6 months. 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 after the second child. An employee adopting an infant child is entitled to maternity leave until the child is 6 months old.

A male employee paying social insurance premiums whose wife gave birth to a child is entitled to paternity leave of 5-14 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% of her average salary 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 year before childbirth or child adoption. This monthly allowance is capped at 20 times the basic monthly salary. Female employees giving 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 gender, nationality, social class, marital status, religion, HIV status, disability, joining or establishing a trade union, and discrimination against outsourced employees is prohibited.

**BENEFITS & PENSIONS**

The compulsory retirement age is 60 years old for men and 55 years old for women. The retirement age may be increased by up to 5 years for employees with high technical expertise, for those at managerial-level positions, 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 the private life or personal affairs of each other that they became aware of 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. Any such foreign enterprise must have a branch or representative office in Vietnam.
RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Upon a transfer of assets or change of ownership of the company, the previous employer must prepare a labor usage plan. After a merger, consolidation, division or separation of the company, under labor laws, the successor employer must continue to employ the current number of employees of the target company, whose labor contracts will remain valid. The labor contracts may be amended or supplemented by the successor employer. If the successor employer is unable to employ all current employees, it must prepare and implement a labor usage plan in accordance with the Labor Code 2012.

Where an employer reduces its workforce due to an asset transfer or change of ownership of the company or merger, consolidation, division or separation of the company, the employer must pay a severance allowance to the affected employees.

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 supposed to create a favorable environment for their establishment. In order for a trade union at enterprise-level to be established, five or more employees have to 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% of their payroll. 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.

TERMINATION

Grounds

The grounds for termination of an employment contract include:

- Expiry of the term
- Agreement between the parties
- The employee reaches the retirement age
- The employee is dismissed in accordance with the laws
- One of the parties unilaterally terminates (e.g., 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, for economic reasons, or due to a merger, consolidation or separation of the enterprise

An employer may unilaterally terminate an employment contract where:

• The employee repeatedly fails to perform their work in accordance with the terms of the employment contract

• The employee is sick or has an accident and remains unable to work after treatment for 12 consecutive months in the case of an indefinite-term contract, or 6 consecutive months in the case of a definite-term contract, or more than half the duration of the contract in the case of a specific term contract or for seasonal employment of less than 12 months

• The employer is forced to reduce production and employment, after attempting all measures to recover from a natural disaster, fire, or another event of force majeure, as stipulated by the government

• The employee fails to attend the workplace on expiry of a period of suspension of the employment contract

• As a result of an organizational restructuring or technological changes, or for economic reasons

An employee on an indefinite-term employment contract may unilaterally terminate the contract if he or she provides the employer with at least 45 days’ written notice.

An employee on a definite-term employment contract, or a specific term employment contract with a duration of less than 12 months, may unilaterally terminate by giving 3–30 days’ notice depending on the cause of termination, which can include where 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 in full, or on time, the wages due under the contract

• Is mistreated or is subject to sexual harassment or forced labor

• Cannot continue to perform the duties specified in the employment contract due to genuine personal or family difficulties

• The employee is elected to full-time duties in a public office or is appointed to a position in a state body

• The employee is pregnant and must cease working on the advice of a doctor

• Where an employee suffers illness or injury and remains unable to work after receiving treatment for a period of 90 consecutive days in the case of a definite-term labor contract; or for a quarter of the duration of a contract for a specific or seasonal job of less than 12 months
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 "Grounds" section above
- The employee is on annual leave or any other type of leave permitted by the employer
- The employee is female and is pregnant, on maternity leave, or raising a child under the age of 12 months, except for specific cases prescribed by the law

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.

Notice

The employer must give prior notice to the employee when unilaterally terminating an employment contract. 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
- At least 3 working days in the case of a contract for specific or seasonal employment 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

Statutory right to pay in lieu of notice or garden leave

Both the employer and the employee are entitled to make payment in lieu of notice.

Severance

Generally, employees working for 12 months or more will be entitled to a severance allowance equal to the aggregate amount of half of 1 month’s salary for each year of employment.
In the event of restructuring, change of technology, or change for economic reasons, or upon the merger, consolidation, division or separation of an enterprise, the 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, is the average salary set out in the employment contract that was earned in the 6 months immediately preceding termination. The average salary for severance calculation purposes is base salary and does not include variable components. In cases where an employee has worked more than 6 months in any year, the number of years of service must be rounded up. Annual leave, public holidays and training courses (excluding study periods or trade practice periods as a trainee or apprentice in order to work for the employer) are included in determining the period of employment.

**POST-TERMINATION RESTRAINTS**

**Non-competes**

There is no regulation of non-compete clauses in the Labor Code 2012. Article 23 stipulates that when an employee performs work which is directly related to business or technological secrets, the employer has a right to the written agreement of the employee to terms of confidentiality for business secrets and technology, and to penalties should the employee breach such an agreement.

As there is no regulation or express prohibition of non-compete clauses, non-compete clauses are permissible.

**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 are subject to a fine of between VND 10 million (approximately US$440) and VND 20 million (approximately US$880) for an exact discrimination on the basis of gender, skin color, social class, marital status, belief, religion, HIV infection or impairment which occurs in the course of recruitment, employment and worker management.

**Unfair dismissal**
The employer may face a penalty of up to one year’s 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 and health insurance for the period during which the employee did not work, plus at least two 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 two parties may agree upon an additional amount of compensation of at least two 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 two parties must negotiate an amendment or supplement to the labor contract.

**Failure to inform & consult**

A maximum fine of VND 40 million (approximately US$1,766) will be imposed on employers who fail to inform employees of the terms and conditions of an employment contract.

An employer may be subject to a fine of between VND 10 million (approximately US$440) and VND 40 million (approximately US$1,766):

- Rejecting a trade union’s request for discussion or negotiation
- Refusing to reach a written agreement with the executive board of internal trade union or superior trade union when unilaterally terminating employment contracts, reassigning workers, or laying off workers who are part-time union representatives

**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 subject to a fine, imprisonment, or both.
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